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Ontario, Legislative Assembly
Select Committee on the New Ontario
Hydro Building

Hearings. 1973. v.1.

May 9 - May 30, 1973



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Ontario Legislative Assembly, Select
Committee on the New Ontario Hydro Building
Hearings 34

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday May 9, 1973.



H-001-1-H-4-7

Select committee - Hydro headquarters.

This committee was appointed by motion of the Legislature on May 1, 1973, "to examine and review the matter of and the circumstances surrounding the agreement for the construction of the new head office building for the Hydro Electric Power Commission of Ontario, and to report its findings and recommendations to this assembly, as soon as it may conveniently do so."

Committee members:

Journal

J.P. MacBeth (chairman) PC York West
W. Hodgson PC York North
R.G. Hodgson PC Victoria-Haliburton
~~J.A. Belanger PC Prescott/Russell~~ -
G.W. Walker PC London North
L.C. Henderson PC Lambton
W. Newman PC Ontario South
M. Gaunt Lib Huron-Bruce
J.E. Bullbrook Lib Sarnia
I. Deans NDP Wentworth
J.A. Renwick NDP Riverdale
A. McFedries (clerk of the committee)
P. Moore (assistant clerk)



LEGISLATURE OF
ONTARIO SELECT COMMITTEE - HYDRO HEADQUARTERS

H-001-1

May 9/73
2.30 to 2.40 pm
fvk

The Committee met at 2:30 ~~pm~~ o'clock, p.m.
in Room 163

(Chairman: Mr. J.P. MacBeth)

Mr. Chairman: Ladies and Gentlemen, I'll call the meeting to order. This, as you know, is the organizational meeting of the Select Committee on the new Ontario Hydro building. I think it can be a very short meeting.

First of all, I would like to introduce to you the two clerks that have been assigned to us by Mr. Roderick Lewis; a Mr. Alex McFedries who is a senior member and the new man, Paul Moore, on my right. Now, depending on the length ^{that} ~~is~~ this committee takes to perform its function, we may find Alex McFedries deserting us somewhere for some holidays, in which case Paul Moore will carry on. In any event, until that happens we are going to have the services of both of them.

Mr. W. Newman (Ontario South): Are you intending to sit all summer, Mr. Chairman?

Mr. Chairman: Well, not unless we arrange to get some ^{2 fees} ~~themes~~ somewhere along the line for sitting, I think we will probably be through earlier than that. However, I understand it is up to the chairman of the committee to make a recommendation to the committee ~~a~~ in regard to counsel. I've had some difficulty over the last few days in trying to find somebody that was suitable. Actually, one of the people that I had in the back of my mind I find had already been retained, and I'll mention his name later. But I am recommending to you the name of Richard E. Shibley, QC, of the firm of Shibley, Righton and McCutcheon. Now, regrettably Mr. Shibley could not be with us today. I've only contacted him today, as a matter of fact, this morning, and had his consent as recently as ^{with} in the hour but he has consented to act as the committee sees fit to appoint him ~~and~~ ^{or} I regret that he is not here so that you could interview him. One ~~is~~ ^{or} two of the committee members

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(Mr. MacBeth)

perhaps know him, and if there is any discussion, or any motion, I would welcome it at this time.

Mr. J.E. Bullbrook (Sarnia): I don't know him personally I know him by reputation as being an extremely able counsel. I'd be prepared to move ~~that the counsel~~ that Mr. Shibley be retained as counsel. I do really think, though, that we do ourselves a disservice at not having him here, but I recognize the problems that you've had, Mr. Chairman, in that connection.

Mr. Chairman: Thank you, Mr. Bullbrook.

Mr. W. Newman: I heard he was a very able counsel, Mr. Chairman. I second the motion.

Mr. Chairman: ²Seconded by Mr. Newman. All those in
a favour? 3

Motion agreed to.

Mxxx

Mr. Chairman: Now, I think the next item of business with regard to our meetings, as you know, being a select committee, we are not entitled to sit during the time that the House is in session, but, I've spoken to the House Leader who is prepared to recommend to the House that we should be given that authority to sit concurrently. I would suggest that maybe we meet again next Wednesday. In my brief conversation with Mr. Shibley today, he said he would like a few days to familiarize himself with the problems, and maybe some of the documents.

Mr. I. Deans (Wentworth): Help.

Mr. Chairman: Yes.

Mr. Deans: I hate to throw ^amonkeywrench~~es~~ into it but we did, in the private bills committee out of necessity, arrange to meet next Wednesday. Well, ~~this morning~~ -

Mxxx~~Chairman~~ - Yes, it would be morning, at least, for the beginning, but it would seem to me that the matter ~~six~~ before the private bills committee is of sufficient importance to believe that they may well sit beyond the morning. I don't want to impede the progress of this committee and I was wondering whether or not

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(Mr. Deans)

a motion by the House Leader, which I think would be favourably received, might enable us to start ~~xxxxxx~~ earlier than next Wednesday and permit us to sit concurrently with the House and ~~thus~~ ^{then} keep us from overlapping onto the day which is generally reserved for committee meetings which is, for many of us, a day that we are tied into other committees.

Mr. Chairman: Well, in making my suggestion, it was only a suggestion. I wanted to keep in mind Mr. Shibley's position that he'd like a day or two. He's in a trial now which will be finished on Friday at the latest, but he would like a little time to review the matter, I suppose, with myself and any other member that would like to discuss it with him.

Mr. Deans: Could I make a suggestion that perhaps, if we receive authority from the House to sit ~~xxxx~~ concurrent, ~~that~~ we arrange to sit as a committee with Mr. Shibley to go over with him what procedures we would like to follow in the investigation of the Hydro building on Monday?

Mr. L.C. Henderson (Lambton): Mr. Chairman, I wonder if I could add to that ~~remark~~ ^{remark} of Ian's, Monday is a pretty bad day for anyone coming a distance from Toronto, ~~and~~ I was going to suggest ^{we might sit} ~~to sit from three till five~~ from three till five, and I understand the solicitor's problem ~~with~~ ^{with} ~~respect to studying the problem~~.

So what I was going to suggest here, is ^{that we} ~~possibly~~ sit Tuesday, Wednesday and Thursday from three till five. Because of the distance, I feel that we should have Monday and Friday free.

Mr. Bullbrook: Why, Ian, if I may, ~~why are you~~ once private bills are finished have you got any other ~~business~~?

Mr. Deans: No, once the private bills are finished we're fine.

Mr. Bullbrook: That should be next week, ~~when they are~~ ^{then they are} finished.

Mr. Deans: Well, we have to sit next Wednesday. ~~xxxx~~ If you would leave next Wednesday out, ^{then} then onward fine.

Mr. Bullbrook: Chairman: Fine. And then we could sit

(Mr. Chairman)

Tuesday, Wednesday and Thursday, subject to the approval of the House.

Mr. Henderson: I was wondering if the chairman could try to arrange for Tuesday then instead of Wednesday, which you are suggesting for a meeting next week.

Mr. & Deans: Yes.

Mr. Chairman: Tuesday and Thursday of next week - three to five - and the following weeks until we are through, Tuesday, Wednesday and Thursdays.

Mr. Deans: Well, again ~~xxxx~~ the question, why would you draw the line at five? Why not sit three till six concurrent with the House?

(Tape 002 follows)

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~~XX~~

~~XX~~

.. instead of the Wednesdays ~~when you are successful, Jan.~~

~~Mr. Gaunt: Yes.~~

~~Mr. Gaunt: Mr. Chairman: For next week, add night.~~

~~Mr. Chairman: XXX/XXXX/Tuesday and Thursday ...~~

~~Mr. Henderson: I want to analyze ...~~

~~Mr. Chairman: ... of next week, 2.00 to 3.00 and
the following weeks until we're through, Tuesday, Wednesdays
and Thursdays.~~

~~Mr. Gaunt: Well, again, the question, why would you draw
line at 3.00? Why not sit 3.00 to 4.00 and then meet 2 with
the House?~~

~~Mr. Henderson: Well, ...~~
~~Mr. Gaunt: That's fine.~~

~~Mr. Gaunt: Mr. Chairman, I think we have to leave
the matter of time open.~~

Mr. Chairman: A little flexible, yes.

Mr. Gaunt: I think it has got to be flexible,
because we don't know just how long this is going to take.
and it may be that after the next couple of weeks we might
be sitting from 10.00 to 12.00 and 2.00 to 6.00, who knows?
I think we have to leave it open. I don't think we can
tie it down.

Mr. Henderson: Well, I would like to be ^{know}able to ~~that~~..
I would like to know that I have the morning free for other
appointments. You know, I'd hate to see us tied ourselves up
to committee and House and everything in ~~the~~ the forenoons.
And I am sure you members must have some time you'd like to
have flexible.

Mr. W. Newman: Very difficult.

An hon. member: Some time off.

~~XX~~

An hon. member: That's true.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Mr. Chairman, may I suggest that we
sit concurrent with the House, Tuesdays and Thursdays. ^{ed} You
suggest from 3.00 to 6.00, ~~on 2.00 to 3.00, 3.00 to 6.00~~

I would assume. But hopefully we are not moving along very fast

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(Mr. WY. Newman)

we could also sit in the evenings. I'd much rather sit in the evenings than I would in the mornings because of our other work.

Mr. Bullbrook: Not including Wednesdays?

Mr. Deans: Not including Wednesday next, but any future Wednesday.

Mr. Newman: ~~Not Wednesday night.~~ ^{to} An hon. member:

Mr. Chairman: Oh, all right, the only change then is from staying 3.00 to 5.00 ^{staying} to 6.00, ~~and~~

An hon. member: That's right.

Mr. Chairman: We'll try to keep flexible. ~~we~~

Interjections by hon. members.

Mr. Bullbrook: Tuesdays, Wednesdays, Thursdays.

Mr. Chairman: But next Tuesday now for an agenda, you simply want to see the solicitor at that time and have a chat with him. *Is that correct?*

Mr. Deans: Would it be possible for each member of the committee to receive copies of the agreement and all of the other documents pertaining to the submissions by the companies involved in the development?

Mr. Chairman: Let me see. I was going to mention to you that we have people ~~the~~ ^{staying} the suggestion was, and I think I mentioned this to somebody ~~it~~ it may have been you, Mr. Bullbrook, ~~that~~ ^{to} that Mr. James McCallum, ^{G.C.} ~~Q.C.~~, is expecting to be here/representing the Hydro. Somebody questioned that they might want him called as a witness. ~~we~~

Mr. Bullbrook: Yes, I would think he ~~is~~ is going to be essential as a witness and I don't know whether he would want to put himself in a position of being counsel and a witness.

Mr. Chairman: And then Mr. Douglas Laidlaw telephoned to me to indicate that he had been retained by Canada Square and Mr. ~~MS~~ ^{MA} Now, I gather that they will not be entitled to ask questions but will just be here to see

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(Mr. Chairman)

that their clients are not being abused in any way. That, I understand, is the procedure. Am I correct in that?

Mr. Bullbrook: I understood that the Select Committee on Workmen's Compensation matters, ~~they~~ permitted counsel to interrogate the witnesses through committee counsel, ~~and~~

Mr. Chairman: Right.

Mr. Bullbrook: ~~and~~ I think that is only fair and just.

Mr. Deans: I want to make it clear so that ^{that} was done by asking the committee counsel to ask the questions, ~~and~~

Mr. Bullbrook: Right.

Mr. Chairman: Right.

Mr. Deans: ~~and that~~ It wasn't a matter of, as we would do through the Chair, ask ~~a~~ a question, but rather that the committee counsel ask all the questions for them.

^{Chairman}
Mr. ~~Wickham~~: But the committee counsel, at least the various solicitors, could have ^a moment or two with the committee counsel, but the questions have to be placed through our own counsel. We are agreed with that.

Mr. W. Newman: It worked very satisfactorily in the other hearings, Mr. Chairman.

Mr. Chairman: ^{Well} Well, now, ~~ix~~ what were we ^{at} at? I got off the subject when I wanted to tell you about Mr. McCallum. I would presume that I will get in touch with these people, ^{and} say they may have some hesitation in what documents they produce voluntarily. I don't anticipate any.

Mr. Bullbrook: Well, I think that we have to, if I may suggest to ~~you~~ you, put it in a context as follows; that I don't think really that we can tell Hydro who they are to have or not have as counsel, ~~and~~

Mr. Chairman: ~~No~~

Mr. Bullbrook: ~~and~~ But I would think from my preliminary knowledge of the situation since Mr. McCallum did

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(Mr. W. Hodgson)

that; that they shouldn't put their hands on ~~that~~ ^{object} all. I think if we are going to go into this we have got to have the whole picture.

Mr. Chairman: Yes, well, all right. I am just thinking there may be lots of references in Hansard that they may not be able to rediscover immediately.

~~An hon. member: I don't think~~

Mr. Chairman: ~~That~~ They'll do their best.

An hon. member: I don't think much of your ~~reply~~ ^{replies}.

Mr. Chairman: And you're all agreed that I should request the House for ~~xxxxxxxxxx~~ concurrent sittings?

An hon. member: Certainly. Yes.

Mr. Chairman: All right. And I ^{have} mentioned the other counsel.

Mr. Henderson: One thing I would like to make so that clear ~~xxxxxxxxxxxxxxxx~~ think you people understand it. What is a vote? Do we do in the case of ~~what~~ we immediately adjourn or do we sit there until we get the call ~~that~~ the vote is coming in?

Mr. Deans: I think we'll do that.

Mr. Henderson: I don't know what ~~we~~

Mr. Deans: I think we'll do that if it arises. Well,

Mr. Henderson: ~~xxxxxx~~ there should be an ~~understandable~~ ^{understandable} establishment of that so we all know.

Mr. Bullbrook: We'll have the Chairman guide us.

Mr. Deans: As long as the ~~we~~

Mr. Chairman: Oh, I think we'll need to ^{keep on} ~~the~~ point in our breaking our sessions here to wait up there for 20 minutes or so.

Mr. Henderson: No, that's fine. We have important people here as witnesses and I ~~xxxx~~ think we should make use of them as far as we can.

Mr. Renwick: ~~I don't think~~ -- Mr. Chairman, I think we can make arrangements with the ~~xxxxxxxxxx~~ whips to make certain ~~xxxxxxxxxx~~ that we're notified about the time of the

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(Mr. Renwick)

vote, ...

Mr. Deans: Mr. Chairman, I wonder if I might raise another matter. We're always breaking new ground in the Legislature, and this is again something different from what we have done in the past. The Workmen's Compensation Board was different again; and I was wondering whether we might consider permitting the press to use whatever mechanical means they require in order to keep an accurate record of for their own purposes of what goes on in ~~XXXX~~ this committee.

Mr. Chairman: Now, let me explain my understanding of it, even before Alex McFedries tells me whether I am right or wrong. I understand that we are an arm of the House and that the rules that apply in the House automatically apply here and that we do not have authority to change those rules. Now, is that ~~the~~ ^{a fair} statement in your mind, Alex?

Mr. McFedries: An extension of the House.

Mr. Chairman: So, an extension of the House.

Now, no matter whether we voted or not, we'd be improper to say that we were allowing the television cameras in.

Mr. Deans: Well, of course, I'm told ...

An hon. member: Tape recorders?

Mr. Chairman: Or, tape recorders.

Mr. Deans: ~~by~~ and I recall to your mind, last evening; I am told that the House has no authority to instruct the committee when the committee is sitting ~~and~~ ^{the} the committee can set its own rules and take its own course of action, ~~and~~ I bring, as I say, to your mind, last evening at 10:30 when we were discussing the matter of whether or not a committee should or should not sit ~~that~~ I was informed by the House Leader and by the Speaker that the committee sat independently of the House and was entitled to establish for itself the rules that we'd operate under. Now, I think that that's a rule ~~that~~ and an opportunity, as I say, to break some new ground

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(Mr. Deans)

in ~~an accurate~~ accurate reporting of what takes place in committees.

Mr. Henderson: Well, then, Ian, let's go a step farther. What are you suggesting it should be?

Mr. Deans: /I am suggesting that they should be able to use whatever the tools of their trade are to maintain an accurate recording of this committee's function. That means that those who are in the business of radio reporting should be entitled to tape records, ~~as the~~ ~~and~~ they should be able to anyway, and that those who are in the business of television should be able to film as they see fit, during the course of the deliberations, ~~As~~ long as it doesn't interfere with the deliberations as they are taking place.

Mr. Henderson: Mr. Chairman, I would have to oppose both of these suggestions. I think...

Mr. Deans: ~~That is~~ ~~in fact~~ well, just let me make just one point that this ~~is~~

~~is~~ ~~that they have the same facts available to them as we have as members of the committee in the room, and I think this is sufficient too.~~

Mr. Deans: Well, I think ~~this is~~ ~~though~~ there is a ~~little~~.

Mr. Henderson: ~~There is a third thing...~~

Mr. Deans: ~~I think that Mr. Henderson thinks~~ ~~at the time that these rules were made there was no such thing, or if there was, it was not~~ ~~that the rules were made by many of the people who report for the media....~~

(Tape H-3- 1 follows)

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~~the following information was taken from~~
~~Mr. Henderson: They have the same facts available~~
~~to them as we have as members of the committee, with Hansard;~~
and I think this is sufficient.

Mr. Deans: Well, I think that at the time - let's be fair, Mr. Chairman, I think that at the time those rules were made there ~~were~~ no such thing, or ~~there~~ ^{they weren't} in wide use at least, ^{that is} the means that are now being used by many of the people who report ⁱⁿ the media. ~~we~~ ^{we} should be interested in the accuracy of the reporting as much as they are. And the only way that you can be sure, and the only way they can be sure, is to be able to use whatever they feel is the way that they are most accustomed to dealing. And you can argue if you wish about it. I do bring to your mind again, sir, that ^{when} the Workman's Compensation had hearings, in the early ~~going~~ ^{going}, ~~that~~ they were in fact permitted to use those mechanical things.

Mr. Chairman: Well, I would not want the committee to make a decision without at least hearing from Mr. Lewis. Now if the committee wants to ask him to come before us today or at our next meeting. But I think perhaps - I know that Mr. Lewis has some strong ideas, not that we need to take instruction from him in regard to it, but I think in view of the deference to tradition of the House, it might be at least wise to hear from him in regard to this. Any other thoughts on it? Do you want me to follow that with him?

Mr. W. Newman: Well, Mr. Chairman, I feel that I have enough confidence in the media, that they cover the House fairly well, the way the House is run, and just in our own extension

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(Mr. W. Newman)

of the House, I think that they can cover it equally as well without having cameras. In all due respect, it can be noisy and disturbing the meeting, and I think we should carry on the same as we do in the House.

Mr. Chairman: I am prepared, if someone wants to make a motion on it, we can have a vote.

Mr. Deans: I would move that the press be permitted to use all of the means at their disposal to accurately record the hearing, subject to —

Mr. Bullbrook: That's a pretty suggestive evaluation as far as the press is concerned.

Mr. Deans: ~~Subject~~^{Mr.}, of course, to them not ~~a~~ interrupting or unduly harassing the sequence. And that is subject to the ruling of the Chair. ~~And~~ And I so move.

Mr. Walker: Mr. Chairman, I think a motion would be premature at this time. I think you should contact —

Mr. Deans: I have already moved it.

Mr. Walker: I think you should contact ~~him~~ either the Speaker ~~or~~ or the Clerk and obtain their opinions.

Mr. Chairman: Mr. McFedries ~~is~~^{is} suggesting that it is even beyond our powers to consider it. I might rule it out of order, but I will undertake this, that I will discuss the matter again with Mr. Lewis and get his thoughts about it, if that's in agreement with the majority. Right now, I think the other thing was, do you want me to try and line up any witnesses for Wednesday that would be then Thursday, wouldn't it? Tuesday, do you want any witnesses — Mr. Gathercole, here. The witnesses I see, the only ones I see automatically, or at least almost automatically, would be Mr. Gathercole and Mr. Candy,

Mr. Renwick: Well, Mr. Chairman, it seems to that the very first day would be usefully spent with the counsel.

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Mr. Chairman: ~~At this time~~ All you want then on the next Tuesday, would be counsel. Next Thursday I might indicate that those two be available.

Mr. Henderson: Do you feel *counsel will take all day*

Mr. Deans: I am not sure, but I know it is very important to them. There are a number of witnesses and I think it could ^{well} take into the afternoon.

Mr. Bullbrook: How ~~a~~ many are there on private bills that sit on this committee?

Mr. Deans: Quite a few.

Mr. Chairman: Well then, I will speak to counsel and perhaps attempt to arrange Mr. Gathercole for Thursday. I think he is the logical one, if that's agreeable.

Mr. W. Newman: I assume, Mr. Chairman, when we come into their legal counsel next Tuesday, I assume you are talking ~~about~~ *about* ~~the procedure that we will be taking with them.~~ *decision on* ~~the~~ *the* procedure that we will be taking with ~~them.~~ *them.*

Mr. Chairman: Right, and I will try to have the information and as many documents as possible to hand out on Tuesday, if not before.

Mr. Bullbrook: Would it be our intention, or do you consider it premature for us to discuss the possibility of other witnesses so that we might at least give them the benefit of some correspondence to say that it is our intention to call them?

Mr. Chairman: No, I don't, if—

Mr. Bullbrook: Well I don't know.

Mr. Chairman: If anybody has in mind or has knowledge of any other witnesses, I must admit that—

Mr. W. Hodgson: Do you think ~~we should~~ *we should* counsel *will* ~~be~~ bring this up.

Mr. Chairman: And I think that in fairness to all parties here, that if they have any names that they think would, or at

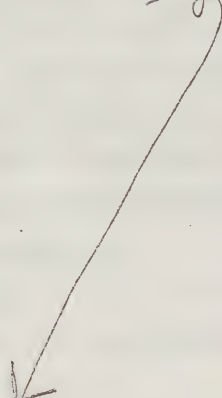
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(Mr. Chairman)

least they should be looking for or thinking about possible people to call in.

Mr. Renwick: Mr. Chairman, I would like to raise a question ~~xxx~~ in connection with summoning the witnesses. I notice in the comment that you made that was reported in the press, that you had suggested that it would probably not ~~a~~ be necessary to have Speakers' warrants. I would suggest to the committee that perhaps we should give consideration to calling all witnesses on Speakers' warrants. The reason I make ^{suggestion} ~~that~~ ^{is} that basically no witness is *going to come* in here voluntarily. *They...*



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M.P.

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(Mr. Renwick)

may come knowing that ultimately we could call them, but it does seem to me to ~~be~~ make sense to treat all witnesses identically and not get ourselves into the position where we may be required to issue a Speaker's warrant in a particular case, which creates an invidious comparison between that witness and someone else, whereas if we have Speaker's warrants for all the witnesses, they are all here ^{for} ~~the~~ the same purpose, in the same way and there is no invidious comparison that can be drawn between whether one has been called by Speaker's warrant or one has not been called.

For the purposes of discussion at least, I would so move.

Mr. Chairman: Let me just make this comment. The difficulty, as I understand it, and I raised the point with Mr. Lewis, ~~and~~ is the matter of maybe not knowing in advance when he has to get Mr. Reuter to sign these and he may not always be available. He shouldn't, at this time of year, be too far away when we are sitting concurrently with the House, but if we follow that procedure strictly we might want to call someone on short notice and it would mean we would have to go round and find the Speaker to get the warrant issued; and I think it ~~also~~ ^{also} involves conduct money. ~~There is a certain reluctance because it has not generally been used, but assuming that we are able to overcome procedural and mechanical problems to do so, which I would think we can, then I think I would ask the committee to direct its mind to the principle of~~

Mr. Renwick: It also involves *other things*

Mr. Chairman: Conduct money, I think, and the witness fees and proper serving, so there are some mechanics. I don't think it would be to ^{save} ~~the~~ the odd witness fee or the conduct money, but it is the mechanics.

Mr. Renwick: Well, speaking to the mechanics, ^{there} ~~may~~ may be a certain reluctance because it has not generally been used, but assuming that we are able to overcome procedural ^{and} mechanical problems to do so, which I would think we can, then I think I would ask the committee to direct its mind to the principle of

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(Mr. Renwick)

the suggestion, namely, that it clearly indicates that every witness is here under the same identical circumstances, and no one can draw any conclusion one way or the other about the way in which the witnesses appear.

Mr. Chairman: Any other comments?

Mr. W. Newman: Mr. Chairman, I appreciate Mr. Renwick's concern, but I have the feeling, concurring in your remarks as I interpret them in the news media, that most of these witnesses will come on a voluntary basis, and I think if they are prepared to so do that is the way they should come.

Mr. Deans: If I may, Mr. Chairman, you realize the problem you put people in. There may be some people who have no objection personally to appearing, except that they may feel a mite reluctant because of association elsewhere, and that it would look very bad if eight people appeared because they had no problem and one person, because he felt perhaps constrained in some way, was reluctant to appear voluntarily but was quite prepared to give the evidence. It would make his appearance look worse than it really was.

The problem that you raise isn't as big a problem as it seems. We did use Speaker's warrants during the WCB hearings, without any difficulty that I can recall.

Mr. W. Hodgson: You mean for every speaker?

Mr. Deans: For a great many.

Mr. W. Hodgson: Yes, for a great many, but the motion before the chair at the present time is that we have got to serve everyone with a Speaker's warrant.

Mr. Deans: Well everyone, ~~obviously~~ obviously isn't going to be even as many.

Mr. W. Hodgson: It is going to be a bit ridiculous as far as everyone is concerned.

Mr. Bullbrook: I don't regard it as ridiculous, I see

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(Mr. Bullbrook)

great merit in it, the purpose being - and I don't have to reiterate, Mr. Renwick did put it in most able terms - we want everyone to feel that their position before this committee is completely the same. ~~and~~ I can see, for example, the situation of us wanting to call a solicitor, and if we rely upon his voluntary attendance it might well be that he would be reticent so ~~to~~ do because of questions of privilege, as between himself and his client. I just hypothesize this as an example. It would be almost a redundancy for him to come voluntarily and then say to us: "I am sorry, I just don't feel I can answer that question" because of the question of privilege. ^{compelled} whereas if he knows he is ^{compelled} to come before us, then he can ask for whatever privilege might be afforded him in the circumstances.

Tape H - 004 follows

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(Mr. Walker)

I think there's a benefit to the individual to know that he has to appear the following Monday or Tuesday; and it gives him an opportunity to refresh his mind with whatever documents may be in his possession. I think it would be very harmful if Mr. Brown were invited to attend on us this afternoon so that we could discuss certain matters with him. I think that would be unfair to the witness. This situation has very important significance and individuals will be, I suspect, required to testify under oath. And that being the case, I think they should have the opportunity allowed them in the normal court system.

Mr. Chairman: Any further discussion?

Mr. W. Newman: Mr. Chairman, I would just reiterate before you vote on this matter; I feel, I don't agree with my own colleagues or with the opposition on this, but I, as a layman not as a lawyer, feel very strongly about this. What I would like to see people come forward on a voluntary basis. And those who are going to refuse to come forward on a voluntary basis, I would like to know about it. ~~And~~ This is merely what I'm saying, in effect; that let's have the Speaker's warrants, if we have to have them.

Mr. Walker: I think, Mr. Chairman, there's a question ~~about~~ as to the individual who is coming forward on a voluntary basis. What Mr. Newman is suggesting, I think, is that individuals would come forward on their own to appear before the committee. Rather, my definition of voluntary as opposed to under Speaker's warrant merely means that the individual, when he comes here, comes carrying a warrant, rather than coming in at the invitation of the Chairman who called him the night before. ~~Through the warrant that~~

~~the individual is coming forward on a voluntary basis.~~

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C.B.

(Mr. Walker)

You are referring to the voluntary individual who will come forward on his own and offer to testify ~~in~~ ^{in which} case a warrant will be issued for ~~him~~ him to come in and testify.

Mr. Chairman: You ~~needn't~~ needn't ask him to drop up here and pick it up.

Mr Walker: I think you could waive time limits in some cases.

Mr. W. Hodgson: Mr. Chairman, I will withdraw my objections to serve each witness with a Speaker's warrant. I'll go along with this and maybe this is one of the more important committees that has sat in the Legislature for a long time and we ~~go along with it.~~ ^{don't want to have any reflection} ~~We are quite sure~~ that the committee has ^(not) done its job and done it properly when its over, so I'll withdraw my objections.

Mr. Chairman: I am ready to put the motion.

Mr. Henderson: Mr. Chairman, I would like it to be known I'm of the same opinion ^{as} ~~that~~ Bill Newman, I would like to know the people that ^{would} ~~preferred~~ not to present any ⁹ ~~briefs~~ ^{to 240} ~~that I have~~ in the legal profession and your feelings with respect to it.

Mr. Chairman: Let me put the motion. Let me say if it carries, I would hope that if there is some witness that we do want to call, we can perhaps - and he is ready to come in the door or he may even be in the ~~audience~~ audience, that it won't stop us from ~~proceeding~~.

Mr. Deans: Let's deal with that if it comes.

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Mr. Walker: It seems to me, Mr. Chairman, if that individual is available and wants to offer an opinion immediately, that at the beginning of his testimony he might waive the rights to proper service.

Mr. Chairman: I didn't want to bind ourselves too closely, because I think the motion is going to carry; it may not. ^{el those} Although in favour. Votes?

I declare the motion carried.

Is there any business to come before our meeting today?

Mr. Gaunt: Just one other matter Mr. Chairman, Is it your intention that we should meet here all the time? Is this the meeting place?

Mr. Chairman: I think Hansard hopes that we would be able to sit in the other room, ^{that's} ~~in the other room~~ ^{wired} ~~for us~~ ^{along} ~~there~~, if its available.

An hon. member: You are talking about the committee room.

Mr. Chairman: The committee room.

Mr. Gaunt: Its not large enough at all.

Mr. Chairman: Well, if its not large enough, then ~~also~~ Hansard hopes that we will operate out of this building, because ~~the~~ ^{its} facilities for everything are in this building, and the thought was that ^f these committee rooms are not large enough. Maybe we can seek refuge in the basement, ^{Caucus} ~~but the basement is used~~ ^{it} ~~for caucus~~.

Mr. W. Newman: Mr. Chairman, we found that the MacDonald Block has a couple of excellent rooms over there, ~~we~~ used them for the hearings on the Compensation Board,

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C.B.

(Mr. W. Newman)

It is excellent; lots of seating capacity and I'm sure when ~~they~~^{we} start, ~~we~~ are going to have a fair amount ~~-----~~

An hon. member: Hansard won't be happy with us.

Mr. Bullbrook: While I agree that we admire Hansard individually, our purpose is to facilitate the public not to facilitate Hansard, ~~and~~ if there are a 100 people who want to sit in on this we have got to provide the facilities for them to be there.

Mr. Chairman: I would agree, You don't want to try out on Monday; there may not be ~~any~~ more here than are here today, I'm sorry on Tuesday.

Mr. Henderson: I think we should meet here on Tuesday.

Mr. Chairman: Let's try it here with an open mind.

Mr. Bullbrook: I must say, what ~~is~~^{does} a closed mind or open mind mean if you've got 100 people waiting to come in? I'm not saying there are going to be 100 people, but I think we should meet where you met on the Workmen's Compensation, so you have ample availability.

Mr. Chairman: You are not happy to try the caucus room down below?

Mr. Bullbrook: I don't care. Is there lots of room there?

Mr. Chairman: Let's try the caucus room down below, I know the acoustics are not the best down there, but if we find that is not large enough then we can do ~~what~~^{as} the other people did.

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C.B.

Mr. Walker: We need ~~an~~ ^{the} amplification system in that room down beside the lounge area. This isn't an amplification system; this is a recording system.

Mr. Bullbrook: There is one question I want to bring up; I'm going to ask Mr. Renwick to help. In connection with the Speaker's warrant, is that a ducks tecum thing; is that inherent in the warrant? Are they compelled to bring all relevant documents with them?

Mr. Renwick: I am certainly glad you've asked for my help, ~~but~~

Mr. Bullbrook: Well, I don't know ^{and} you seem to be omniscient.

Mr. Henderson: I thought you understood this, Jim.

Bullbrook:

Mr. Henderson: Do you know?

Mr. Renwick: Not specifically; I just assume that ~~it is~~ ^{it is} ducks tecum.

Mr. Bullbrook: Yes ^(I think it's essential) that all witnesses will ^{relevant} bring any documents that they have. Correspondence.

Interjections by hon. members.

An hon. member: We will ask ~~him~~ ^{them} to bring the documents with ~~him~~ ^{them}.

Mr. Deans: I think it should be said, too, that lawyers should speak in laymen's language!

Mr. Chairman: Then ~~we~~ ^{they} will loose any advantage ^{they have} as lawyers, ~~and~~ ^{Mr. Deans?} that's what we are trying to avoid at the moment.

Mr. Bullbrook: ^(This is) The last time I asked Renwick for any advice.

Mr. W. Hodgson: Excuse me, Mr. Chairman, I have another meeting to go to.

Mr. Chairman: ^(I think we are through.) Then are we content to meet ^(with the solicitors) in this committee room or a small committee room on Tuesday?

The committee adjourned at 3:10 p.m.

MASTER COPY

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, May 15, 1973.

11-51-4-23-4

APPEARANCES

Committee members: J.P. MacBeth (chairman) - York West
W. Hodgson - York North
R.G. Hodgson - Victoria-Haliburton
J.N. Allan - Haldimand-Norfolk
G.W. Walker - London North
L.C. Henderson - Lambton
W. Newman - Ontario South
M. Gaunt - Huron-Bruce
J.E. Bullbrook - Sarnia
I. Deans - Wentworth
J.A. Renwick - Riverdale

A. McFedries (clerk of the committee)
P. Moore (assistant clerk)

Committee counsel: R.E. Shibley, QC
Ontario Hydro counsel: Pierre Genest
James McCallum

Canada Square Counsel: Donald Laidlaw

MEMORANDUM RE MEETING OF SELECT COMMITTEE

MAY 16th, 1973

By Order dated May 1st, 1973, this Select Committee of the House was appointed to examine and review the matter of and the circumstances surrounding "the agreement made the 18th day of October, 1972 between The Hydro Electric Power Commission of Ontario ("Ontario Hydro") and Canada Square Corporation Limited ("Canada Square") hereinafter referred to as "the agreement" for the construction of the new Head Office building of Ontario Hydro.

This select committee has been ordered by the House to make findings and recommendations as part of its report to the House.

Issues, respecting which findings and recommendations may be expected, having regard for statements of members of the House both within the House and to the press are as follows:

1. Are the terms of the agreement, as they affect Ontario Hydro, financially and economically sound?
2. Does the agreement provide benefits and advantages which justify the decision to abandon previous plans for construction of a building owned and financed by Ontario Hydro?
3. Did Ontario Hydro take all steps necessary to obtain competitive proposals?

4. Did Mr. George Gathercole, members of the Ontario Hydro Electric Commission, the chief architect of Ontario Hydro and the members of the staff of Ontario Hydro, or any of them, in any way have their judgement respecting the agreement for the new head office building affected by any consideration other than what was in the best interests of Ontario Hydro and the people of Ontario?
5. Was the agreement of a nature and of such importance that Ontario Hydro should have submitted it for consideration on a policy basis to the Minister reporting for Hydro?
6. (a) Who was the person who alleged that there was a warning delivered by someone to one of the unsuccessful bidders that if he did not be quiet, he would never get another government contract?

(b) Was such a warning in fact ever delivered?

(c) If such a warning was delivered, by whom and to whom was it delivered?

All of which is respectfully submitted for consideration by the Select Committee.

R. E. Shibley, Q. C.
Counsel to the Committee

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

M-5-1

May 15/73
~~3.05-3.10 p.m.~~
~~E.M.~~

The committee met at 3.05 o'clock, p.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, if I may call the meeting to order. We have already had one meeting, as you know; at that meeting you appointed counsel sight unseen. I have just introduced him to the members privately, I now introduce him to you publicly - Mr. Richard Shibley, Q.C., who will be acting as counsel for the committee. Mr. Shibley and I have ~~been~~ ^{had} some time together, ~~and~~ he has also spoken with one or two of the members, I think, from all three parties, ~~and~~ ^A a little later on I will be handing the proceedings over to him to tell you what he proposes and I hope to have your endorsement of it.

I just want to make a personal apology, I don't generally like to call a misquote in regard to newspapers but there was an article the other day that said something along the lines that the chairman had said that Mr. Moog would be called and Mr. Davis would not be called. I just want to say that I had not spoken that strongly on behalf of the committee or even dared to speak on behalf of the committee. I had indicated that I expected Mr. Moog would be called and that I hoped that Mr. Davis would not be called. I just wanted to clarify that so I wouldn't start off on the wrong foot with the members of the committee by taking unto myself authority which I realize I didn't have.

Just one other point: There is a letter here from the Legislative Librarian, Dorothy Wagg, who would like copies of the evidence that comes before us and a transcript of what

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~~E.M.~~

(Mr. Chairman)

we are saying and I would expect there would be no objections to giving that to the library. If there are, you might raise them; if not we will ask the Clerk to send copies of anything that comes before us to the library.

Just one other matter to do with the television cameras and ~~the~~ electronic devices, I don't know whether there are any electronic devices in here now recording — if there are, I would ask they not be used or preferably taken from the room — other than what Mansard itself is ^{using} ~~doing~~! There will be copies of course available of the Mansard transcript.

I discussed the matter of television with Mr. Lewis — that is, the Clerk of the House. ^{He} assures me that it is against the rules of the House ^{and} that we, being an arm of the House, ~~we~~ must abide by those rules and if there are to be changes in them, they must be made by the House itself and not by ourselves.

I think with those words I will ask ~~then~~ Mr. Shibley, who has done a great deal of work on things, to take over at this point and introduce himself to you. Mr. Shibley.

Mr. R. E. Shibley, Q.C.: Thank you, Mr. Chairman.

The first obligation I feel is to record with the members of the committee the awareness which I have of the ~~judiciary~~ obligations imposed upon me by the acceptance of your appointment. I intend to discharge that duty to the fullest of my capacity. I hope that, in the same way ~~that~~ there was unanimous concurrence in the matter of my appointment at the outset of this hearing that all members will feel at the conclusion of this hearing that I have similarly warranted their confidence.

I want to immediately go to the business of the hearing and advise you that because of the broadness of the terms of

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 E.H.

(Mr. Shibley)

reference in the sense of the wording of the order of the House, it is my advice to the committee that it immediately undertake a definition of the issues which this committee is about to determine. So as, so to speak, to arrange touchstones as reference points throughout the hearing, for purposes of determining relevancy of evidence throughout the hearing, and at its conclusion for purposes of effecting the ~~report~~^{Findings} and recommendations, ~~Findings and recommendations~~, which are the subject of the report again which you have been ordered by the House to provide to it at the conclusion of your deliberations.

I have prepared written material in this respect because I consider the matter of what should be the factual issues^{to}_^ be of much importance to the committee. I have spent a considerable amount of time and thought on the matter and have received the input of the following. I have read the comments of members in the House as reported by Hansard; I have spoken to a number of members of this committee; I have read the letter of Mr. Gathercole, which was tabled in the House; and I have embarked upon a review of some, but certainly not all, of the documentation of Hydro which has been produced to me at my request. As some of you know, my efforts in respect to the business of this committee commenced on Friday morning and I don't mind telling you it is wreaking havoc with my family life already; I spent the weekend on the material, but I feel sufficiently informed from all^{of}_^ these sources to have formulated six basic questions.

Now, may I say at the outset that I do not intend these questions to be ~~unduly~~ restrictive of the efforts

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E M

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(Mr. Shibley)

of this committee. If hereafter you should determine that you want to expand on, add to, or ⁱⁿ any way vary ~~from~~ the questions as settled today, that is your authority within the limits of course of it being relevant to the order of the House. ~~On the other hand, at the end of my review of these six questions, I will require your~~

(Tape H-6 follows)

May 15/73
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M.S.

(Mr. R.E. Shibley, Q.C.)

On the other hand, at the end of my review of these six questions I will require your decision and instructions, either to proceed with them as prepared by me, in the sense of proceeding to investigate and enquire into those questions, as well as to tender evidence before you directed to the termination of those questions.

Before I disseminate the written material, may I please ask that members make note of ^{that} to reserve your questions to me until I have completed my own review of all six questions. I intend, after reading the question, to explain what it is that I believe to be relevant to that particular issue and, hopefully, when I have completed my review of all six questions and what I consider relevant, the number of questions will thereby be minimal.

May I ask for the assistance of someone to distribute those, please?

You will note that the preparatory portion of this memorandum relates to the order of the House, and I have expanded on it with some particularity.

By order dated May 1, 1973, this Select committee of the House was appointed to examine and review the matter of and the circumstances surrounding "the agreement made the 18th day of October, 1972 between The Hydro Electric Power Commission of Ontario ("Ontario Hydro") and Canada Square Corporation Limited ("Canada Square") hereinafter referred to as "the agreement" for the construction of the new Head Office building of Ontario Hydro.

Now, the next is my own comment:

This Select committee has been ordered by the House to make findings and recommendations as part of its report to the House.

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 M.S.

(Mr. R.E. Shibley, Q.C.)

friendly ~~relationship~~ relationship between the member of the House and the contractor, ^{the} principle of the contractor, was material to the contract in the sense of affecting the thinking of any of the people who are listed in this question. If not, then of course, the question would be answered in the negative. If so, then I would expect you to consider it otherwise.

Now then, question number 5: Was the agreement of a nature and of such importance that Ontario Hydro should have submitted it for consideration on a policy basis to the minister reporting for Hydro? Now, in this connection, I'm proceeding on this term of reference: the Premier has said in the House that it was not the subject of deliberation by cabinet. And it is my view and I understand it is, in any event, the practice in the House that when a member states ^a the proposition as a matter of fact, it is accepted as ~~is~~ true except in very dire circumstances of evidence to the contrary. And so I think it would be presumptuous ^{to} not to accept that statement that it was not considered by cabinet, But that this committee, in my view, should, as a matter of considering what recommendations, and bearing in mind it is expected to make recommendations, that it should consider whether or not Hydro, in the circumstances of this particular agreement, having regard for its importance and the new nature of its terms, insofar as Hydro is concerned it was a different type of agreement than previously embarked upon, whether it ought to have submitted it to the minister reporting for Hydro, is a matter for your consideration and recommendation.

The sixth and final question is as follows, and it breaks out into three parts: 6(a) ~~Who was the person who alleg~~

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~~R.E.S.~~

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(Mr. R. E. Shibley, Q.C.)

(6a) Who ~~was~~ was the person who alleged that there was a warning delivered by someone to one of the unsuccessful bidders that if he did not ~~confine~~ ^{be sure} ~~confine~~, he would ~~not~~ ^{never get} ~~not~~ another government contract.

(b) Was such a warning, in fact, ever delivered?

(c) If such a warning was delivered, by whom and to whom was it delivered?

Now, again, you are aware of statements made in the House preferable to some such form^u. I should tell the members of this committee that as of this moment I have not been provided with any evidence in support of this allegation. Nevertheless, it is a serious matter, in my opinion, to have been ~~reigned~~^{reigned} in the House and certainly as in matters surrounding the contract in question, and it is in my view that if there is evidence available to support the suggestions of any such warnings, that this committee should consider such evidence and reach a conclusion in respect thereto.

Now, those are the six questions that I feel encompass the whole spectrum of matters referable to this disclosed contract as ~~discussed~~ by the material and the people to which I have earlier adverted. I am not married to this wording. I must tell you, however, that it was produced by me after much careful thought in an endeavour to be objective and fair to all those who are affected by the questions.

Now, I am open to any inquiry at this juncture, by the committee. I have many other topics to deal with in terms of how I suggested it proceed, but, at the moment, what I'd like your ~~ind~~ endorsement of is the statement of the question, as outlined in this memorandum for such variation therefrom as you may see fit to decide. I caution you again that without this hearing my intention then would be to ^{say} ~~bring~~ to other parties affected; there are the issues. Do you have any documents

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(Mr. R.E. Shibley)

in your possession ^{fe}re[?]asable to those issues. And, if so, produce them to me. And what witnesses, what persons, in the employ of your organization, or otherwise associated with your organization, know anything about these six questions? Give me a list of their names. And to the extent that people are named, it is my intention to ask for a statement of the evidence available from each such person, such that I can ensure not only a proper preliminary ~~enquiry~~ ~~but~~ that is preliminary to the giving of that person's evidence, but also to ^{be fair to} ~~delete~~ the witness and ensuring completeness of the evidence which he gives, if, and when, he is called.

At the end of your deliberations, it will be these same questions which will be the basis of the findings and recommendations that are expected of you from the House, and, again, as I say, I consider them extremely important as a beginning for your deliberation.

Mr. Chairman: Well, thank you very much, Mr. Shibley. As you see before ~~me~~ you, gentlemen, ^{there are} ~~are~~ six proposals that Mr. Shibley feels we should investigate, not that ~~if~~ we can't go beyond them. If evidence is produced that we should go beyond them, but the going beyond these bounds would be a definite decision of the committee. In other words, somewhere along the line, if we were to take out enquiries outside the ^{at} six brackets, we would have to make a definite decision that we should add another or more fields of enquiry to go into. So let's have your comments on this, if there are any.

& Bullbrook:

Mr. ~~Bullbrook~~ I want to make a comment, if I would, Mr. ...?

Mr. Chairman: Mr. Shibley.

Mr. Bullbrook: Mr. Shibley, I am sorry. In connection ^{with} of the wording of the provincial order

(Tape H-9- 1 follows)

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 4th floor

~~(Mr. Shibley)~~

~~... inquiry to go into, as I said, have your comments on the then
 if there are any more?~~

~~Mr. Bullbrook: I want to make a motion? If I may,~~

~~Mr. Shibley: In connection with the wording of the original order,~~
 and I'm without my glasses, a select committee of this House be
 appointed to examine and review the matter of ^{and} the circumstances
 surrounding the agreement. Our main task then would be concentrically,
 at least, the agreement.

Now, it seems to me that we are dealing with the
 agreement solely from the acceptability of the agreement as far
 as Hydro is concerned. I would like to have your thoughts as to
 whether we had obligation to investigate ^{the} question of whether there
 was undue advantage gained under the terms of the agreement to someone
 other than Hydro. Your thrust, as I read it, is: "Was this economically
 and financially sound as far as Hydro was concerned? Was it beneficial
 to the people of Ontario?" Do we have a collateral obligation to
 investigate ^{the} question as to whether the agreement ^{benefited} someone
 outside of Hydro unduly? ~~Is it~~ :

Mr. Shibley: I think there are two questions here that
 should satisfy you in that respect. First, ^{being} ~~the~~ question three, namely;
~~the~~ "Did Hydro take all steps necessary to obtain competitive
 proposals?" Now, if someone other than Hydro derived the benefit
 on the receiving end, Hydro being on the paying end, then surely ~~that~~
 is relevant to the question of whether the proposal is competitive.

The other question is question four, because -

Mr. Bullbrook: The words - "any consideration"?

Mr. Shibley: "Any consideration" are very ~~has~~ broad
 words and, let me say this, no one has suggested anywhere that I
 have read that somebody derived ^d a benefit extraneous to the
 contract. It seems that everyone's attack on the agreement has
 been on the basis that it was improvident and induced by the
 particular relationship of this one contract. I would think that
 the questions ^{as} ~~the~~ stated encompass both such areas of inquiry.
 There was never any statement in the House, or otherwise, that

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 fvk

(Mr. Shibley)

somebody derived some ^{further} benefit such as ^{you're putting} ~~you're putting~~ ² ~~you're putting~~.

Mr. Bullbrook: Yes, well, I really didn't know whether to use the word "pleading" or not. I'm searching. I just wanted to have a meeting of minds with you and I accept, frankly, your comments fully in ~~connection~~ connection with ~~the~~ questions number three and four. I think it does. However, without any predisposition I think when we do get into the documents, sophisticated as they are, it will be our obligation to analyse it, not only from the position of Hydro, but from the position of all parties to the document.

Mr. Shibley: Well, you are quite right. There is quite a potential in this hearing ~~that~~ that as we go along we'll see other areas of investigation. At the moment, though, I think if you recognize such an area of investigation then you should come forward at that ~~the~~ juncture of the hearing and say: "I want a supplementary question put to the six basic questions", and have this committee decide as a committee, that yes, it is now an additional and pertinent fact to be developed. But, at the moment, I know of no such additional question. I must tell you that I haven't yet got through all the documentation, by any means.

Mr. Chairman: This is to be ^{some} ~~the~~ guideline to us, Mr. Bullbrook, not that we can't eventually go outside of it, but that until we have good evidence to take us outside it we would limit ourselves to this field, so that we wouldn't be all over the block, as it were.

32 Mr. Bullbrook: Do you need a motion to that, Mr. Chairman?

Mr. Chairman: I don't think ^{we} ~~you~~ do, but there may be a few more questions yet. ~~xxxx~~ Mr. Deans.

Mr. Deans: I was wondering whether we might be interested in knowing whether the method used by Hydro in this particular circumstance is, in fact, something that has been the practice ^{of} ~~by~~ Hydro ~~throughout~~ over the years. Whether this is a departure from the normal procedure ~~used by Hydro throughout the years~~.

(Tape H-10 follows)

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PLC

(Mr. Chairman)

I don't think we do but there may be a few more questions yet.
Mr. Deans:

Mr. Deans: I was wondering whether we might be interested in knowing whether the methods used by Hydro in this particular circumstance, or, in fact, something that has been practiced anywhere for years. This is a departure from the normal procedure used by Hydro or whether in fact ~~this~~ this has been their practice over the years and therefore ^{they have} simply been following this practice.

Mr. Shipley: When you say "this" do you mean a lease-purchase agreement?

Mr. Deans: No. ~~That~~ Their method of determining ⁱⁿ who should be the person chosen to develop this development.

Mr. Shipley: ~~Oh~~, I think that is much too ~~narrow~~ broad. I think that you are entitled ^{to} and should look at whether they went out and got competing proposals, preferable to this building, but ^{do not} ~~to~~ engage upon an inquiry of what they otherwise do, etc., We are going to have more than enough to do to deal with these questions, and I urge you not to be distracted by that. I think if you telescope your thinking on what was in fact done in this case, and remember, there were three other proposals submitted by three development management companies of repute and substance — You have enough to go on there to determine whether they did all that was necessary to get the best deal, so to speak.

Mr. Chairman: Mr. Renwick:

Mr. Renwick: Mr. Chairman, I have two comments, possibly three. I want to first of all associate myself with the thrust of what Mr. Bullbrook was saying. It seems to me that a counterpart of the first question is, Does the agreement confer any undue benefits or advantages on Canada Square Limited, or anyone else? And I want to make absolutely certain that whether it is done now, or by subsidiary term of reference later on, that the wording of question number one ^{does} ~~is~~ not restrict the consideration of whether or not there is a conference of any undue benefits or advantages on anyone else. The second matter

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 P.L.G.

(Mr. Renwick)

refers to question number two. The substance of the question I agree with, but I think it is very important that we not be unnecessarily circuitous about what we are saying in question two. Question two; the way it is ~~ph~~ phrased indicates to me a consideration of the agreement, and then a backward glance at whether or not the decision was justified. I would ask, Mr. Chairman, that council consider rephrasing question number two to state:

"Why did Hydro abandon its plans for construction of a building owned and financed by Ontario Hydro, and does the agreement provide benefits and advantages ~~justify~~ which justify that decision?"

Mr. Chairman: Have you got it written there, ~~xxxxxx~~. Would you repeat it Mr. Renwick?

Mr. Renwick: Question two would be rephrased: "Why did Hydro abandon its plans for construction of a building ~~an~~ owned and financed by Ontario Hydro, and does the agreement provide benefits and advantages which justify that decision?"

I make that suggestion, Mr. Chairman, not by way of semantic change, but because I think it is a substantial question to be phrased in that way, and my subsidiary comment, (and if council is intending to deal with it later we can then deal with it later) ^{is} Are we going to have, and is ~~not~~ council going to have, benefit of any expert assistance on the questions which are ~~ris~~ raised specifically by items one and two, that is, with respect to the financial accounting and with the respect to the comparative advantages of proceeding one way or another in the real estate market of Toronto for the purpose of ^{having the} ~~(inadvisable)~~ construction?

Mr. Chairman: May I ask you to leave your question two because Mr. Shipley does have some suggestions for us and if they are not satisfactory we can perhaps enlarge. He has given some thought to it and has some recommendations to make. Did you get all of the wording in the question?

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 PLC

Mr. Shipley: Well, I ~~was~~ have some comments to make on it. ~~Dealing~~^{ruised} with, the first item, by Mr. Renwick, ~~(something)~~^{on the} ~~on the advantages~~ to Canada Square; ~~which~~, I would have thought that question one took care of that. Because there are two parties basically to this agreement; Canada Square and Hydro, and if the contract was improvident to Hydro, then there is ~~some~~^{some} ~~sales~~ ~~advantages~~ to Canada Square and vice versa. I don't really ~~believe~~ see that that.

Mr. Bullbrook: I disagree with that, Mr. Shipley, entirely. I am sorry to interrupt you, but.

Mr. Shipley: Well, I am in your hands.

Mr. Bullbrook: There is no necessary reciprocity there. ~~On~~ This agreement possibly could be advantageous to Hydro, and unduly advantageous to another party, ~~in~~.

Mr. Shipley: I was going to get to that.

Mr. Bullbrook: I am sorry.

Mr. Shipley: This is a different point. Mr.

Renwick intermingled benefits to Canada Square and benefits to others. Your point was benefits to others. He added two parts to the proposition and I ~~was~~^{was} ~~dealing~~ only with the first. ~~Dealing~~^I ~~to begin~~ with, benefits to others, again, come back to the answer I gave you Mr. Bullbrook, and I am in your ~~hand~~ on that, and I have yet to run into any material directed to such a question. ~~If you as a~~ ~~committee~~ ~~assigned~~ to insert something to that effect then, certainly I ~~am~~^{am} prepared to work at it. ~~Dealing~~ with your second matter, Mr. Renwick, the first statement ^{you} made was "Why did Hydro abandon plans for construction of a building." and then go on, ~~to other~~^{Does the} agreements, to provide benefits" and so on, and I would have thought that question four dealt with the first part of ^{the} ~~a~~ two parts that are of concern to you. Because basically what you are really asking ~~is~~^{is} why did Hydro abandon ~~its~~ plans, or asking did Hydro abandon its plans ~~to~~ because they believed honestly that it was in the best interests of Hydro and the people of Ontario, so I don't see that it is necessary to

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provide^a supplementary questions to cover that point, and, of course, the second part ~~of it~~ is already covered by the second question.

Mr. Chairman: I want all members of the committee to be assured that all the avenues they personally want to travel ^{are open to them.} ~~are all open to them.~~

Mr. Bullbrook: I want the Chairman to be assured too...

Mr. Chairman: You are going to assure that we ~~travel~~ ^{travel}

Mr. Bullbrook: No, ~~I didn't~~ ^{and} I didn't intend to say that at all! I want ~~to~~ counsel^e the other members to be assured that this ~~exercise~~ ^e isn't an exercise in semantics on the part of the hon. member for Riverdale ~~and~~ ^{or} myself and really, since we have a meeting of the minds, that ~~is~~ it is our right, then, privilege and I suppose, direction to enlarge upon these things as the matters unfold. I am convinced personally to carry on in that fashion and be guided by these preliminary statements ~~and~~ ^{and} our responsibility.

Mr. Renwick: I am satisfied now they have raised the matter, to ~~proceed~~ to proceed in this way. I want^d to make ~~that~~ ^{placing} absolutely ~~certain~~ ^{certain} that we are not ~~putting~~ ^{placing} ourselves in some position where we ^{would} have to go through some elaborate procedures in order to ~~alter~~ the substance of the questions which are before us.

Mr. Chairman: Well I foresee that as only being an agreement with the committee to ~~take~~ add another clause, but in the meantime, these would be the clauses^{to} which Mr. Shipley would direct his questions. I don't believe, unless the committee thinks otherwise, that we need a motion to adopt them.

Mr. Henderson: Mr. Chairman, what would be the procedure if we wanted to go down another ~~avenue~~ ^{avenue}, if we wanted to open up another ~~avenue~~.

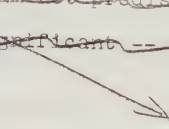
Mr. Shipley: Let me say this: If I myself saw a ^{for investigation} ~~avenue~~ ^{if} I would take it. I think ~~that~~ any members of the committee recognizes some topic or some issue that he ~~considers~~ ^{considers}

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not encompassed by these questions, and which is relevant to what has been referred to by order of the House, then it should be raised as a matter supplementing the six basic ~~xxx~~ issues that we are directly ~~bringing into~~ ^{inquiring} both before and during the course of the entering of evidence.

Mr. Ballbrook: May I, Mr. Shipley, just to ~~elaborate~~ elaborate, I used the word other ~~xxx~~ -- I want to record for you ~~that~~ in effect ~~(inadvisable)~~ ^{you don't want to} ~~implying games with~~ I, a preliminary perusal of the lease ~~contains~~, you will find that it contains the words "subject to the approval of the mortgagee." I think we are going to have to analyse the effect of these words. ~~I as one am not predisposed at this time to want to evaluate quite significant -- who the mortgagee is.~~



Tape H 11 follows

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~~Mr. Chairman:~~ I, as one member, not predisposed at this time, will want to evaluate quite significantly who the mortgagee is, ~~and~~ what the terms of the financing are, and what rights the mortgagee has in connection with the wording, subject to the ~~approval~~ approval of the mortgages. So that you understand, ~~that's~~ that's the type of thing that we might be getting into. Thank you.

Mr. Chairman: Do you see any problem, in the questions you have outlined there, getting into that matter?

Mr. Shibley: No, I do not, Mr. Chairman, ~~and~~ ^{may} again/I advise the members I have asked you for your observations and, as I review the material, I will have them in mind.

Mr. Chairman: Well, I think we're agreed that the list before us is the list that will be our guide until we decide we need further marks of guidance.

Mr. Shibley: Thank you, Mr. Chairman.

ⁱⁿ Mr. Chairman: Yes, if you would proceed on your next point, Mr. Shibley.

Mr. Shibley: I have given you some ~~intimation~~ ^{intimation} of the kind of effort that is involved in the preparation and presentation of the case before this committee. I am of the view, from that much of the material that I have already ^d examined, that it is necessary for me to have the assistance of someone expert in the analysis of the financial data referable to the making of this ~~contract~~ ^{contract}. I don't know yet that I am going to need someone in the real estate field as such. The transaction, being a lease-purchase transaction, is basically of a financial nature. I have in mind to recommend to the members of this committee that you authorize the retainer of the nationally known firm of Price Waterhouse and Company and, in particular, Mr. Ron ~~Manzer~~ ³ Anson Cartwright who is a partner of that firm, experience in areas of financing, lease ^{books} ~~books~~ and tax. He is someone known to me and certainly has my endorsement for the work at hand. I have, in a preliminary way, spoken to him as to whether he feels he could fulfil the function that I have in mind. I'm given to understand that Price Waterhouse have already in existence a programmed computer

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(Mr. Shibley)

to assist them in an analysis of lease ~~and~~ ^{back} transactions and a computation of information, financial and otherwise, referable thereto. This was a plus, I might say, to my enquiry of Mr. ^{Anson} Cartwright as to whether or not he would be willing to act. ~~He~~ He has told me he would be willing to act as a consultant. I have told him, in turn, that ~~he~~ ^{as witness} he might be required to be ~~as witness~~ should he undertake the task. His only reservation was that he not be asked a question which would, in effect, usurp the function of this committee, namely, what was his view as to whether the contract in question was a good one or a bad one. I have assured him that it would be my advice to this committee that no such question would ^d be put to him but that, of course, he might well be asked to comment on the correctness of the financial data upon which Hydro proceeded. We had no difficulty in that respect. So ~~that~~, again, it's my recommendation to this committee that you afford me the assistance of Mr. Ron Anson — Cartwright, the partner of the firm of Price Waterhouse, for that purpose.

Mr. Chairman: Any questions of Mr. Shibley in regard to this recommendation? I think this ~~is~~ ^{is} an appointment with some ~~fees~~ ^{fees} involved. I ~~has~~ have no idea what ~~fees~~ ^{fees} would be involved and I don't know whether you would have or not, Mr. Shibley?

Mr. Shibley: No, ~~xxxxxxx~~ I do not.

Mr. J.N. Allan: Mr. Chairman, I don't know Mr. Cartwright, but I'm willing to take Mr. Shibley's recommendations of his services and I would like to move that he be appointed.

Mr. Chairman: As a former Treasurer of this ~~main~~ province, do you think we can afford to make this appointment without knowing what we're getting into in the way of fees?

Mr. Deans: ~~I know~~ ^{don't know} ~~we can do otherwise.~~ ^{we can't afford to}

Mr. Renwick: I certainly second that.

Mr. Chairman: Any further discussion or any further questions?

Mr. Bullbrook: Yes, could you advise me whether Anson — Cartwright is a ~~name~~ hyphenated name so that we could ^{address him?}

Mr. Bullbrook: It is.

Mr. Henderson: Mr. Chairman, I'm looking over the

Mr. Henderson: This is the minutes that we have started

Mr. Chairman: I see. ~~I think that explains that~~

Mr. J.N. Allan: I think I can explain how that might

Mr. Henderson: In Hansard, no.

Mr. Chairman: Yes, that's right. It's the list in

Opposed if any.

Mr. Shibley: Now, in addition, because of the number
~~was was~~ in witnesses that ~~that~~
~~was xxxxxxxxxx~~ involved who require to be interviewed,

~~Now~~ I should tell you that my method of briefing myself is as follows. As I start screening the material, documentary or otherwise, I make a note of the name of any person disclosed by the documentation as having had some part, or something to do with the agreement in question. ^{Up} to this point of time, I have a list of some 24 possible witnesses. I'm not suggesting for a moment that I'm going to call 24 witnesses. I must tell you, however, that I think at least 10 of them are probable. Certainly, more than Mr. ~~Gale~~ Gathercole or Mr. ² Gandy are going to be called by me from Hydro. Now, these

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(Mr. Shibley)

are all people of a status and such sophistication that I do not feel that anyone less than a person trained as a lawyer can effectively interview them. ~~But~~ I would ask you to permit me the assistance of a junior lawyer from within my own firm, John Bell, from time to time, as I may require it necessary, to employ someone else to effect interviews or do other work that I feel can safely be done by him. He has assisted me on many cases in the past and you will just simply have to leave it to my discretion as to the extent that I employ him. ^{assured} ~~Be assured~~ that to the extent that his time is used up, you are avoiding the cost of mine.

Mr. Chairman: It is my opinion that we don't need any special motion on that. We engaged Mr. Shibley ^{and} ~~in~~ his services and, in the sense that this is one of his staff, I think it stands to reason that he has that authority.

Mr. Shibley: Thank you. Now, then, I would like to talk to you a little bit about the matter of witnesses. I want to report to the committee that I have had excellent co-operation from each of counsel for Hydro and for Canada Square. I have requested of them that they should produce to me all documents in the possession of their clients which ~~they~~ their clients consider, after review with care, to be relevant to the issues to be decided upon at this hearing. I have only given them some hint of some of the issues and Hydro has provided me with some documents, but certainly not all of them ~~now~~ at this time. ~~They are working~~

(Tape H-12 follows)

CORRECTION

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, May 15, 1973.

Due to difficulties encountered in the recording and transcribing of the discussion at the above meeting, the attached portion was inadvertently omitted from the transcript.

The first sheet (H-12-3) should be inserted to replace the existing page H-12-3, and the second sheet ties in at the fourth line from the top of page H-13-1.

We regret any inconvenience this might have caused.

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Peter Brannan, Chief of Hansard Reporting Service.

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DD

(Mr. Shibley)

and Hydro has provided me with some documents but certainly not all of them at this time, and I ~~know~~ know they are working very assiduously to complete the brief of documents and I expect them within the next day or so and similarly with Canada Square. I have also asked each of them to have their people and I have given them the names of the people within their organization that I have already identified that they should compile a statement ~~so that~~ so that I can have some indication of the information available from that source. ^{Not} that I intend to restrict myself to what they say they know about matters, but at least it's a beginning and this is ~~being~~ being done also. There are areas of evidence and some of these areas are such that the evidence ^{referable} ~~applicable~~ to them is not going to emanate from these sources, or may not.

I would suggest to the members ^{of} ~~on~~ this committee that there be, ~~was~~ so to speak, ~~and~~ an open invitation to anyone at large who has knowledge of or information referable to these issues as in ^{counterpart} ~~Board~~ that they should make that knowledge ^{or information} available to the committee either through me or its ^{chairman} ~~chairman~~ ^{but that} It should be made available in writing and over a signature and if you see that kind of input then you will act on it. Otherwise, it is not my intention to follow up what is mere speculation or rumour. That's not to say I am not going to interview a lot of people on my own motion or have them interviewed. ~~It~~ It will be done. ^I I am asking to put me and the committee in a position that no one should be heard to complain when your deliberations ^{are} ~~over~~ that there was no opportunity to have an enquiry made by myself or anyone else ^{to have} ~~and had~~ evidence handy that they considered to be relevant. If there are such people at large, then they should be prepared to submit the information in writing and over a signature, but not otherwise.

Mr. Chairman: ^{I can see} ^{but} over a signature, ^I I am wondering

if there may be information relevant to ~~say~~ say, staff of Hydro ^{on the line} he didn't want to put his signature to it. I

(Mr. Deans)

that they don't actually have access to themselves, but that they may have knowledge of. They may feel and lots of people do feel that they may suffer from the consequences if they come forward. Can we leave that sort of thing for the time being and deal with it if it should arise, because I would hate to have a hard and fast policy that precluded us from investigating something because someone said that today. Is it not possible to wait for a week until we see how things develop before we come to that kind of conclusion?

The other point I want to make would be that I would assume Mr. Shibley would inform us - the committee - from time to time if people did not appear, or maybe make representation to him, since they are actually making representation to him rather than

Mr. Shibley: My intention is to adduce every bit of relevant evidence that comes to my attention in that witness box. On the other hand I am not going to exercise this committee with information that isn't probative.

Mr. Deans: Some of my very best information has been anonymous and after a while I have got to know the people and I can well understand why it was anonymous. That's why I think it would help us not to limit ourselves in any way until we come to a situation.

Mr. Bullbrook: No; I would have to record that I would have to disagree with you.

Mr. Deans: Well I would expect you to.

Mr. Bullbrook: It is somewhat self-defeating. I don't know how you could expect me to agree with it, other than the fact that I had mentioned it previously.

The problem in anonymity is that it's too broad in its scope. I just see the possibility of too many communications to the counsel, without substance. My thought was this, that I don't see why a person couldn't write to counsel and be interviewed by a counsellor and still retain their anonymity,

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know the virtue and value of a signature. Many members have are ~~been~~ having a problem with it.

Mr. Bullbrook: Yes, I strongly support the position taken by ~~Mr.~~ Mr. Shibley. It can be ^{only} of value to us, ^{evidentially} ~~supportable~~ ~~that is, if it is~~ ~~supported~~ by a person ^{and} there are two considerations, ^{one} the obvious wild ~~and~~ goose-chases ^{that can be put before} and, of course, ^{the} ~~and it is up to our counsel,~~ of necessity, to report any factual information by evidence available to us. I support the submission.

Mr. Chairman: ² Maybe we ^{4 got 2} ~~can get now~~ ^{to know on} ~~on~~ (this matter of somebody saying that if we called ^{on} Mr. Jones, he would have very valuable information. Mr. Renwick.

Mr. Renwick: I think that anyone should be free to contact the council or the committee without ~~and~~ necessarily either going through the paper or putting down on paper what evidence there may be. I think that it is a wise precaution ~~that we should take into account~~ ² that he should communicate with council by ^a letter signed by him. I don't think we should have him ² ~~communicating to communicate~~ ^{indicating} in written form prior to discussing it with council what that matter will be ^{just so long as there is some way in which the person can contact Mr. Shibley, and} it is up to the council then to decide what ^{use he will make of that person after interviewing him,} ~~he can do here~~.

Mr. Shibley: Of course if the person ~~is~~ is prepared to present himself - my concern was rather a matter of identification of an individual then have the signature as such.

Mr. Renwick: I agree with your point about identification ^{ion} but apart from that I don't think that he should be required to. ^{and} ~~use~~

Mr. Chairman: Mr. Shibley, you mentioned either the chairman or ~~yourself~~. What about any other member of the committee? Is there any reason for limiting it to me?

Mr. Shibley: Well I had hoped you ^{to avoid} ~~you~~ chaos.

Mr. Deans: There is a problem. You may want to inform the committee that they should be looking at something,

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(Mr. Deans) actually ~~in~~ themselves, ~~that they~~
that they don't have access to ~~themselves~~ but ~~they~~
~~themselves~~ have knowledge of it. They may feel and
a lot of people do feel that they may suffer from the
consequences if they ^{come forward}. ~~I think~~ - Can we leave that
sort of thing for the time being and deal with it if it
should arise ^{because} ~~because it~~

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Mr. Bullbrook: A witness may not

wish to identify himself and you found that it had no substance. You don't feel that you have any obligation.

Mr. Shibley: No.

Mr. Bullbrook: To say, "By the way, somebody told me something, ^{and} these are the set of facts that he told me and I found out that they were true."

Mr. Shibley: That's basically.

Mr. Chairman: Thank you.

Mr. Shibley: We may have lots of those.

Mr. Chairman: Well, I don't know whether we have come to ~~the~~ conclusion or not. I rather think we haven't other than perhaps it has to be left a little bit to counsel's discretion. I think what he has suggested is that if any information comes to him, first hand, that he thinks is relevant, that he would feel obliged to bring it before us and that he cannot keep that person's identity away from us as well. Isn't that what you are saying? That you, if somebody gives you information, that they have, ~~that~~ then you will feel obliged to put them in the witness box?

Mr. Shibley: Well there is a distinction ~~ex~~ between information and knowledge of facts. If someone has information that leads me to a fact which is provable by a document or by some other witness then I don't have to disclose the source of my information.

Mr. Chairman: Right.

Mr. Shibley: But I want to make it clear that if the person presents himself as someone having knowledge of a fact, as opposed to having information of a fact, then that person is going to wind up in that witness box.

Mr. Deans: I'm afraid that by saying that you may - you may not, but you may be scaring people who may want to make information available to you.

I can understand what you are saying. I'm not taking away from that.

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(Mr. Deans)

I just think that knowing the operations of the civil service that it is very - any civil service - it is very difficult for some people to recognize the protections that ^{made} are available to them, whatever they are and that some people may well feel that by coming forward and offering to you some ~~MEM~~ information which may be useful in the hearing, they will automatically end up in the witness box, then there will be fewer people and therefore not as much information.

Mr. Walker: That is not quite what he is saying.

Mr. Deans: Well it isn't quite what he is saying but certainly ^{it is} the inference which will be drawn by the majority of people who are not schooled ~~at Osgoode Hall~~ either at Osgoode Hall or the University of Toronto or any other law school. I'm talking about the average guy on the street. I'm not talking about the legal profession ~~group~~.

Mr. Chairman: Well, have we perhaps not - that's why I was raising the question about other members of the committee.

Mr. Deans: ^{I think we have} ... inaudible....

Mr. Chairman: I think that there are enough eyes and ears on the committee if somebody feels that way they can go to the committee member ~~and~~ I don't think it's going to cause chaos, Mr. Shibley. I don't think there will be that much of it, but ~~if~~ I think the public knows that if there is anything of that nature that ~~there~~ they are hesitant to speak to you ~~or~~ the chairman, that maybe they can go to the party of their choice and get the message across some way.

If we find its adding to too much confusion or chaos as you suggested then we may have to amend our ways.

But.

Mr. W. Hodgson: Well, in no way has Mr. Shibley ~~intimated~~ ^{not} intimated that anyone that has information about any member of the committee and the committee member can bring it before the council or the chairman

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Mr. Chairman: That's right. Then the committee member can

Mr. W. Hodgson: I mean I'm in support of

Mr. Shibley's suggestion at this time. We can't conduct this trial on hearsay. We have to conduct it on facts.

Mr. Henderson: Mr. Chairman, I

Mr. Bullbrook: You have to make sure that it's not a trial, too.

Mr. W. Hodgson: That's right.

Mr. Bullbrook
 An Hon. Member: I know what you mean.

Mr. Henderson: I think Mr. Shibley ^{has the right} ~~is very busy~~, idea,

Mr. Chairman. I support him.

Mr. Chairman: Well, then, press on, Mr. Shibley.

You are doing remarkably well so far.

Mr. Shibley: Thank you, Mr. Chairman. I have just a few more things to say and ask for your approval of.

~~That~~ That has to do with the order of calling witnesses and the timing. I can tell you that I would myself benefit if this committee, rather than reconvening on Thursday, ~~on which~~ -- I understand you can't sit tomorrow in any event, and we would only have the benefit on Thursday of three hours of testimony, ~~that~~ I would suggest that we recessed today. I have other things to say before you do recess-but that we recess for one week today and reconvene on the 22nd. It would give me the opportunity to do much more and I feel I need to do much more in the way of reviewing the evidence and preparing a brier.

The interruption would only lose for us three hours head start, whereas we would have a full week of additional time for preparation. The other thing I want to say about the evidence is that I don't want to be held to calling Mr. Gathercole as the first witness for Hydro. I would rather be left free to decide upon my own order of calling witnesses. I have already indicated to you that more than two witnesses must be called, in my view from Hydro and I'm not sure that the chairman should

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necessarily be the first such witness. So I ask you not to limit me by anything that has been said in the past. I've only read of it in the press that you expected to hear Mr. Gathercole and then Mr. Candy. I'm just putting you on notice now that I don't feel under that kind of restraint in terms of the order that the evidence will go in.

I would tell you that I intend to deal in depth with Hydro's evidence initially and likely go to the evidence of Canada Square immediately thereafter. I have in mind also a consideration of the evidence of the three companies other than Canada Square which competed for the contract.

And ~~finally~~ finally, there is sort of the other possible witnesses ~~and~~ Because I would rather deal with it within the confines of this committee and because I know that the question will be put whether here or outside of this committee room by others, I would like to again lay down some ground rules ^{referring} ~~referrable~~ to the testimony of members of the House, or ^{I would} like you to lay the ground rules.

Now in that connection, Mr. Chairman ~~has~~ been put to an explanatory statement as to an earlier press release and I would like the committee's thoughts on this particular topic. I start by saying that I would prefer not to have to call any member of the House as a witness before this committee of the House.

I think it is to be preferred for example that it not be necessary to call either the hon. Mr. Davis, Premier of the Province, nor to have to call Mr. Robert Nixon, the Leader of the Opposition.

On the other hand, if the evidence in question is relevant, if the evidence is highly material and if the evidence is uniquely within the exclusive knowledge of a member of the House, even though that member be the Premier of the province or the Leader of the Opposition or anyone else,

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4.15

(Mr. Shibley)

then of course, I would not hesitate to recommend to this committee that a member of the House be called as a witness. I emphasize again, that it is my present thinking, and I am looking for direction from you at this early stage, that this should only take place if the evidence in question is not available from any other source.

Mr. Chairman: Are there any comments from anyone?

Mr. Bullbrook: I recognize your reticence; the only thing that I feel - the reservation that I feel, Mr. Shibley, is ~~that~~ the impact upon the public of that statement. We know the motivation that you have and we share it, but I certainly don't think we would want the public to feel that, for example, they might be subject to calling before us on evidence that you deem material, whereas a member of the Legislature will only be called before us on evidence that you ~~may~~ deem highly material. I recognize I am just using one of your phrases; I think we want the public to feel that anyone who has any knowledge of this would be treated in the same fashion, and I don't mean that to be *placid*, either. I think that is essential.

I would hope, as you express, that there would be no necessity to call any member of the House, but I don't want to see an almost ^a plane of distinction between ~~you~~ them; I wouldn't want the public to feel that there was.

Mr. Shibley: Well, if I may answer you in these terms: I did not intend a distinction, but I think its to be preferred, and I am grateful to you for your very frank statement on this question because it's a worrisome thing for me ^{as counsel} ~~to answer~~ to the committee, but my approach to it is this: no one is immune in terms of being required or asked to come before this committee, and I am sure that any member who is asked to come before this committee - I am confident at least that any member who is asked would appear and give his evidence.

I can't help but feel that somehow it's inappropriate to have a committee of members of the House taking testimony from another member ~~who~~ if that can be avoided. Now, as I said, if it happens that I come upon a fact which cannot otherwise be put in evidence, then fine, I'll put my head down and off we go. But I'd like you to sanction my basic premise of approach in this area, ^{namely} ~~mainly~~ that I would not call a member unless I ran into that particular situation.

Mr. Deans: Well, may I ask - I can understand what you are saying. I think, though, that we have to be careful we don't go off on a fishing expedition, looking for people who might be able to provide information in ~~extra~~ ~~extra~~ order not to have to call members of the House. Now ~~at~~ I think that if all persons who have information which has a bearing on the outcome of the hearing will be treated identically, as Mr. Bullbrook has said, and that if we believe that the information that anyone has is first-hand information and information that we require, then that ~~one~~ individual should be called, and that we not attempt to seek out other people rather than call them. In other words we not say well I think we have got all the information and ~~xxxxxxx~~ therefore there is no need to call whoever it may be. And that is my only concern; that we don't ^{prefer} ~~defer~~ on looking for others that can verify or ~~re~~ refute information or evidence that we currently have simply to avoid calling anyone else who would maybe feel embarrassment or seem a little improper.


Mr. Shibley: Well, I don't want to imply that it would embarrass any member of the House as such. I am proceeding on the basis that when I have briefed this case, that with respect to the issues that are relevant there is enough evidence before you to come to an intelligent decision, and if I see an area that is devoid of sufficient evidence and it requires the attendance of a member then I will say so. But at the moment I would like to approach my brief on the basis that I have ~~retired~~ ^{retired} to the committee

and get your endorsement of that approach.

Mr. Deans: Well if I may ask a question, I am assuming that if you go from Hydro to Canada Square, to the three competing companies; at ~~point (d)~~ point (d) which would be the fourth, other witnesses, it would be at that point that we would decide whether or not we had sufficient information and whether or not it required the calling of witnesses or additional persons including anyone who may have a relationship with the Legislature.

Mr. Chairman: Mr. Allan?

Mr. Allan: Well, Mr. Chairman, I think there is general agreement with ~~you~~ with the words you have used. I'm wondering if we could not have



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(Mr. J. N. Allan)

a proposal that is recognized, having in mind that ~~this~~ ^{from} doesn't bind the committee ~~from~~ not changing their minds at some particular time and taking whatever action was necessary at that time.

Mr. Chairman: I think that's a good suggestion. It is similar to the points that we adopted at the start. This can be a premise and if the committee at some later date decides that it ~~wants~~ wants to change its mind, and that's in the recommendation that Mr. Shibley has put forward, it is included in that, then we can do so.

Mr. Shibley: Then, are we agreed?

Mr. Chairman: Well, I think we have reasonable agreement on it. I am not going to ask

Mr. Deans: We have agreement that this includes Hydro, Canada & Squamish and three competing ^{companies,} and then at that point we evaluate whatever witnesses should be heard and we determine who they are.

Mr. Shibley: I have some others in mind as well.

Mr. Deans: ..?

Mr. Bullbrook: Are you going to continue on with those now, Mr. Shibley?

Mr. Shibley: Do you want to know what I have in mind?

Mr. Bullbrook: I'd like to, yes.

Mr. Chairman: Have you any reason for not - I know your mind may not be made up completely on it but ^{have you} ~~is there~~ any reason why some of this information should not be disclosed?

Mr. Shibley: I am concerned only that there should be some misinterpretation as for ~~one~~ ^a witness - because of certain exchanges in the House. I'll mention that one additional witness I have in mind, is the Treasurer, Mr. Farmer. I've run across a memorandum of his in the material, and I think he may be a necessary witness. Maybe. There are others, but I would prefer at the moment ^{to} my own investigations ^{is} ~~not~~ ^{not} really sufficient.

(Mr. Shibley)

complete, that I would prefer at this time not to mention it.

Mr. Chairman: Well you mentioned a considerable number ~~xx~~ that you might call, did you not? ~~mention~~ Was that to me privately or ~~to~~ publicly? It was numbers, not names.

Mr. Shibley: No, I mentioned it here that the largest number of them are in Hydro and they are only possible witnesses. I expect to call from ~~the~~ Hydro certainly not less than five witnesses and my list of possibilities with Hydro runs to 14.

Mr. Chairman: Is this something that you would hesitate to give to Mr. Bullbrook privately, as a matter of tactics?

Mr. Bullbrook: It's ~~not~~ a question of Mr. Bullbrook, it's a question of the committee.

Mr. Chairman: Yes, well, I ~~xxxx~~ wondered what the reason for it was. If it's tactics then I think maybe we had better leave it.

Mr. Shibley: At the moment I am just concerned, quite frankly, that each of these people not be sought out, if you like, by the press in particular. I intend that these people be interviewed by me or Mr. Bell ~~and~~ ^{or} my staff, ~~and~~ I just may conclude that some of them are wholly immaterial to this hearing. Obviously I have not that number of names and I will be adding to it.

Mr. Bullbrook: Mr. Shibley, may I say this to you, you said, "Would you like to hear them?" I've said yes. and you said, "I would prefer ^{not} to tell you". ~~and~~

Mr. Shibley: Well then, I would prefer not to. ²

Mr. Bullbrook: That's fine then. I do want to ask you this if I may, and again without ~~pre-disposed~~ predisposition. At present, ~~xxxx~~ have your thoughts taken you yet to the question of after Canada Square is interrogated, *relevant to the financing* who is to be questioned?

Mr. Shibley: I can describe these people in any way.

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(Mr. Shibley)

I have on my list a ~~mu~~ number of people who are on the financial end of Hydro's operation. I have yet to identify who is — I am sorry, I have got the name of the person who gave financial advice to Canada Square. I intend to have the benefit of Mr. ~~ANSON~~ Cartwright with respect to financial matters.

Mr. Bullbrook: I am sorry, ^{I am misleading you.} It wasn't the question of the intricacies of the financing, but the persons involved in the financing.

Mr. Shibley: Oh, I am sorry.

Mr. Bullbrook: You haven't gotten to that. I consider those words "subject to the approval of the mortgagee" most proleptic ~~presenting~~ here and I want ^{to that} you know one member of the committee.

Mr. Shibley: It's registered ^{with me}. I won't overlook it, but I am not ~~Mr. Bullbrook~~ yet there. ~~yes~~

Tape H-015 continues

~~May 15/75~~~~4:20 4:22 pm~~~~4:22~~~~(Mr. Shibley's billbook)~~~~I consider these words subject to the approval of the
members of the House. (Shibley) and I want
you to know as a member of the committee,~~~~Mr. Shibley: It's registered on me, I won't
overlook it, but I'm not yet blessed.~~Mr. Chairman: Mr. Deans.Mr. Deans: How do you intend to pursue
point number six?

Mr. Shibley: Well, with respect to number six, ^{this} question arises by reason of a question put in the House by the Leader of the Opposition, Mr. Nixon, or statements made by him, and subsequently repeated by, I believe I'm correct, Mr. MacDonald. At the moment I haven't ^{anything} to go on in this area. I intend to inquire of the three companies who are competing what they know of this, if anything, and go from there. I would hope that any information available through Mr. Nixon or whomever would be provided to me so that I can follow through. Once I have exhausted my own areas of investigation, at the moment they are really quite limited to the three competing contracts and the ~~personnel~~ personnel within those firms, ^{that this} that's my feeling at the moment, ^{may well} be the end of my research unless somebody comes forward and says "this was the source or basis of that statement".

Mr. Renwick: Mr. Chairman, have we got ourselves into some kind of a secret, ~~of~~ process here inadvertently? This is an inquiry and it's not a trial. I for one ~~may~~ would

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~~4:20-4:30 pm~~

(Mr. Renwick)

certainly like to know in advance of the particular sessions of the committee who is going to be called before the committee. I think it's in everyone's interest that there be maximum openness with respect to the ^{committee} ~~body~~ who is going to be called. I do not think that persons who may be witnesses are going to be embarrassed or dissuaded from speaking the truth here. I'm just a little bit concerned about this question of not knowing ^{who} the witnesses are going to be next week.

~~Now~~ If counsel's reservation is just simply that he hasn't made up his mind ~~as to~~ because he hasn't had time to be prepared to do the necessary preparations, then that's fine and I can understand ~~that~~ not just giving us names for the sake of giving names. But on the other hand ^{would} I think that in the layout of the work of the committee, certainly by next ^{meeting} ~~week~~, and certainly if possible, in advance of the meeting, we should know by and large who he is going to call from the various organizations which are involved in this hearing. I think that's very, very important. We are not sort of excluding witnesses. Anyone who intends to be called should be entitled to come and sit in and listen to the other evidence if he wishes to do so, ~~and~~ I think we've just got to maximize the openness of our proceedings and be very careful that we don't allow the strict rules of evidence or the trial procedures to subconsciously affect the way in which the inquiry is conducted. It is a public investigation by a public body in Ontario with the maximum amount of openness.

H-16 follows

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Mr. Chairman: I accept that. I ~~was~~ was assuming that Mr. Shibley's reason was along the line that he wanted, rather than throw~~ing~~ out a list of people that he might call, he wanted to know first what value there might be in calling them and he hadn't yet determined that. Are you prepared to give us the names before you do call them?

Mr. Shibley: Oh, yes. Once I decide who is to be called I would have no hesitation in announcing that to the committee. It's only because, as I've probably explained, my approach to the matter is to list everyone in sight. I always use a shotgun technique in terms of listing people, initially, ~~that~~ might be potential witnesses. And then, having analyzed the case in the overall, decide who among them should be called. Once I reach phase two you can be assured you will be told who is being called and as soon as I have decided in what order they are going to be called, you will also be told. If you appreciate that in a matter of this complexity, I myself may find that I'm sort of taking it one step at a time and not trying to encompass the whole of what's going to happen in a hearing, in terms of decision making at the outset.

Mr. Renwick: I can quite understand that, Mr. Chairman. I simply want to make certain that the names of the witnesses are not, sort of, fed piece meal into the committee without at all infringing on counsel's right to say, "Well, I've decided now that I don't need to call such and such a person, I'm going to call someone else." That kind of freedom he needs. But I think that by next~~xxx~~ week, in sketching out the additional areas of concern, ~~that~~ there can be some identification, in my view, quite properly and necessarily from their point of view, to the committee so that should they see fit to attend the hearings or to pay more attention to ~~it~~ because they know ~~it~~ may involve them as witnesses, that they should be free to come, free to give consideration to the questions. If it were, by any conceivable stretch of the imagination, necessary that any one or more of them feel that they should have

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(Mr. Renwick)

personal counsel, that they have ample time to take those kinds of steps.

Mr. Chairman: All right. I think we have the thoughts of the committee on it. I don't think they're contrary to any great preference on your part, Mr. Shibley.

Mr. Shibley: Not at all, Mr. Chairman.

Mr. Chairman: Anything else then that you want to review at this time?

Mr. Shibley: No, I think I have completed what I want ^{with} ~~to~~ the committee.

Mr. Bullbrook: Mr. Shibley, are you content with the temperature in this room?

Mr. Shibley: I am not content.

Mr. Chairman: They turned the air conditioning off, I understand, so that we could be heard and if I turn the air conditioning on they may have some trouble with Hansard and our ability to hear. I don't know whether the crowd we have here today is indicative of the attendance we may have in subsequent days or not. As I said before, Hansard wants to keep us in this building if at all possible and I think it might be handy to continue here for our own sakes, as well, in case there are votes in the House, rather than going across to the MacDonald Block. But if attendance -- I know there's the difficulty of the heat, but I would think putting up with that might be preferable to the walk across to the other building. Mr. Deans?

Mr. Gaunt: Mr. Chairman ---

Mr. Chairman: Mr. Deans ^{wanted to} ~~was one of the~~ speakers.

Mr. Deans: I would like to ask a question about the witnesses and the counsel.

Mr. Chairman: Oh, you've changed the subject then. Yours is on the same thing, Murray?

Mr. Gaunt: Well, I was just going to say, ~~we~~ if we

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(Mr. Gaunt)

get 100 people in here and the air conditioning is turned off,
 I think ---

Mr. Chairman: We're in trouble.

Mr. Gaunt: --- at the end of three hours we would
 really be in trouble.

Mr. Renwick: It would certainly shorten the hearing.

Mr. Gaunt: Might have a new hearing.

Mr. Chairman: Well, I think, Mr. McFedrie, that
 you ^{be} making alternative arrangements if necessary, ^{want you?} ~~committee room 2~~
 ? 2 Mr. McFedrie: Oh, we could possibly go to ~~committee room 2~~ ^{committee room 2}

Mr. Chairman: Committee room 2? I thought ~~you~~ were
 talking, at one time, about the Macdonald Block, if we had to.

Mr. McFedrie: Well, that's only ^{if we have a very large} ~~because~~ ^{audience}
^{audience} 200 or 300 ~~people~~ people or so.

Mr. Bullbrook: My comment was a facetious one, I
 don't want you to take it ^{seriously}.

Mr. Chairman: Well, I am! I take everything you say,
 Mr. Bullbrook, very seriously. Very seriously. Well, all right.
 Let's try it again here next Tuesday and, if necessary, we'll
 play it by the heat of our skin and see.

Mr. Gaunt: I think we've got to see what sort of
 audience this hearing attracts. If it attracts a large audience
 then we're going to have to make other provisions.

Mr. Deans: Well, we may restrict it by the sale of
 tickets. May I ask a question about the witnesses and counsel?
 The only previous experience I've had in hearings was that the
 counsel was paid for by the government. ^{That was hearing} ~~The WCB~~ ^{in which}
 the counsel ^{was} ~~was~~ classed as the only witness, as I recall, ~~is~~ covered
 by government expenditure. Is that the case in this enquiry?

Mr. Chairman: No, sir. I assume I would know about
 it if it was. I, perhaps, should have introduced counsel earlier.
 There are three counsels here today, Mr. Pierre Genest, of

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(Mr. Chairman)

Ontario Hydro and Mr. James McCallum also of Ontario Hydro. They are on my left at the end of the council table there. And Mr. Douglas Laidlaw, Canada Square, and Mr. Moog, and Mr. Laidlaw is on my right.

Now, I don't think there's any suggestion that the government should pay any fee for these gentlemen.

~~Mr. Deena: I wasn't thinking of them.~~

~~Mr. Chairman: You weren't thinking of them. I would not~~

Tape H 17 follows

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~~Mr. Chairman~~

~~...the ...
...should pay any ...~~

Mr. Deans: I wasn't thinking of that, particularly.

Mr. Chairman: You weren't thinking of that?

Mr. Deans: No.

Mr. Chairman: I would not think that anybody ^(then) would need counsel. After all, they are here as witnesses not as defendants. Their evidence will be protected, I think it is protected automatically, is it not, ^{? I am looking at you, Mr. McFedries.} ~~under the rules~~ Mr. McFedries: Oh, yes, their evidence is protected under the Canada Evidence Act. I think it is privileged automatically. So I don't think they would need counsel. If somebody comes at a later date and asks for counsel and feels they cannot afford it themselves, then maybe they will make representation to the Chairman and we can decide at that time.

Mr. W. Hodgson: There is legal aid!

Mr. Chairman: Well, there is the possibility of legal aid. Legal aid might be a little too harsh for the kind of protection ~~that comes under the Canada Evidence Act.~~

Mr. Deans: I just wanted to know ~~what~~ ^{what the rules were}.

Mr. Chairman: Right now, to my knowledge no one is receiving any counsel at government expense other than the committee itself.

Mr. D. Laidlaw: Mr. Chairman, I wonder if I might be given the opportunity to speak to that point. It is a subject, in any event, that I wanted to raise with this committee. We have just now been introduced. We have present here counsel for the two parties who are really most directly involved in this hearing, myself for Canada Square and its president, Mr. Moog, ^{of course} Mr. Genest and Mr. McCallum representing

(Mr. Laidlaw)

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the Hydro.

I must confess that I am not familiar with what rules apply to the part that we are going to be entitled to play in this proceeding. But let me say right now that this proceeding, but for the fact that it is proceeding as a select committee of the House, ~~is~~ is for all intents and purposes a public inquiry and is going to involve the same sort of exposure ^{and} the same sort of interest that any royal commission would generate or that a public inquiry held under the Public Inquiries Act would generate. ~~and~~ If either of those tribunals were involved, rather than a select committee of this House, ^{discharging} exactly the same functions as this committee proposes to discharge, then my client would be entitled, unquestionably, to representation, both, to have my attendance and I would be afforded the right to cross-examine on any point that touched or concerned the interest of my client. And I would be afforded the right to lead evidence. And I will put it quite squarely to you, I don't know whether or not ^{this} a select committee has ^{any} particular rules that are applicable to the representation, ^{and} if so, are they more restrictive than would have been accorded to me if this proceeding were held elsewhere, but with exactly the same functions?

And The second consideration; if the answer to that first question is yes, I would like to know what rules ~~they~~ are ~~then~~ that apply, ~~and~~ If there are any, how does one go about getting them changed?, ~~Because~~ so far as I am concerned, I don't know of any Act of this Legislature that restricts the right to representation? If there is a rule, I can only assume it would be a rule of the House and any rule of the House

(Mr. Laidlaw)

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E.H.

is a rule that can be changed. The only experience that I have been able to acquire is not personal, but in just making inquiries as to what has happened in the past, and there hasn't really been that many that will provide a precedent. Mention has been made of the Workmen's Compensation hearing, but, of course, that was a hearing before a standing committee of the House, and my understanding is that there are rules that are applicable to a standing committee. This is not a standing committee; it is a select committee.

I can really not go much further in precedent, except to say that there have been occasions I know when people's rights have been directly concerned in hearings before Parliamentary bodies where representation has been afforded. If you want to go back far enough, you can go back to King Charles. Incidentally, to his own regret, I guess, he saw fit to act for himself and would ^{be} up on the gallows. ~~Probably, however, the~~
~~main object of the investigation~~

(Tape 18 follows)

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(Mr. Laidlaw)

...~~...but he can't do it for himself~~... Probably one of the main bones of my submission ~~...And that, as I say, the secondary consideration is~~ if there are rules, what procedure does one adopt in order to see that the rights of my client - and I don't suggest by this anything improper about what's proposed here - I simply seek now to attain for my client what otherwise would be my right in any event under ~~the relevant~~ the relevant legislation in this province if it weren't held before this particular body. And I wouldn't have thought - in fact, I wouldn't have expected it at all, and I don't think it would be the case, that because the hearing, to use a neutral term - ^{held} inquiry - is ~~now~~ before a select committee of this House, that this committee or the House would want to obtain for itself rules that are more restrictive of the right of representation than would otherwise have pertained outside this House. I ask then that I, first of all, be told what is the position; and secondly if it affords me less of a right to speak or to take part on behalf of my clients ^{than} ~~and~~ the Public Inquiries Act would have permitted me, that I be given at least the scope that would pertain under that Act and we be governed by that procedure. And therefore to put this inquiry on the same footing and basis as it would have it been on if it had not been a committee of this House. Now I can well appreciate that there are some very serious ² ~~questions~~ ~~questions~~ to go into, ~~it~~ and it is for that reason that I rise. And that perhaps the non-legal members of this committee might think that to afford representation or the right to take part to my client, or to have me take a part in this hearing on his behalf, ~~and~~ similarly for the Hydro, would be to open the door to a sort of legal gymnastic display where we are now descending into the bearpit and trouble with all sorts of technical ~~objections~~ ^{quasi-} technical objections and nothing but impediments ~~was~~ ^{are} put before the inquiry here, and that we would serve ~~only~~ ^{only} to impede ~~it~~ ^{and} not to process the business of this inquiry. Well, of course, my answer to that is that we would have to have confidence I think enough, as members of the legal profession, that we would not be doing that. But in any event the sanction there is yourself, of course, Mr. Chairman, if

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can be very much affected without actually having a decision made /—/
that is going to decide any status or any question concerning that
party. ^{it is} And for that reason ~~that~~ the representation rights have
been broadened for a lot of commissions, as well as public inquiries
under the Coroner's Act, under the Statutory Powers Procedures Act,
and so on and so on. And I would have thought the same considera-
tions would affect this committee in considering my application to
you, to have the same rights to take part in these proceedings as
I would have been afforded outside this House. I would like to
thank you, Mr. Chairman, for your consideration. I think Mr. GENEST
probably wants to join me in that.

(Tape H - 19 follows)

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(Mr. Laidlaw)

that were the case, and you have complete control of the inquiry and could control that very quickly. What I have in mind is that I have the right to protect my client by ~~seeking~~ ^{seeking} and obtaining the right to cross-examine on those occasions when there is some very really material issues to explore, and to put forward evidence if there may be some conflict. ~~Justification~~ Let me just give you an example and then I'll sit down; let me just put my position to you and I want your consideration of it. ~~Now~~ I haven't been sitting here trying to take out of context notes, but one might really take it almost as a Freudian slip, ...if nothing else, that on one occasion at least the proceedings were referred to as a trial. Now I don't think ~~it is~~ ^{it is}.....

Mr. W. Hodgson (York North): I must say it was a slip.

Mr. Laidlaw: Yes, I know it was a slip. But in a way it very much is, because you can't talk about ~~such~~ this whole issue that you are exploring without talking Canada Square, and, to put it bluntly, was there any improper political pressure ~~ask~~ or patronage involved in the obtaining of that contract. And if that's so, it is a very serious allegation against both the company, Canada Square, ~~against~~ and the chief executive officer. And, with the greatest of respect, ~~as to~~ whether or not you are ultimately going to decide the rights of the party; which you are not of course, you are going to make recommendations or whatever it may be to the House, ~~that~~ in itself is not an answer because, respectfully, that's all that most public inquiries wind up doing and all that most royal commissions wind up doing. But, in the meantime, the progress of it, and the publication that ~~has been~~ ^{is being} given to the hearing - all of which is to the good - in effect very seriously affects and concerns my client's rights. And for that reason ^{no} doubt which concerned Chief Justice McQuarrie, as he ~~then~~ was, when he sat as a member of the royal commission, and it had ~~resulted in~~ ^{resulted in}....the progress of some of the legislation through this House in the past two years, the very recognition that your right

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~~... as they would have been reported outside this House.~~

~~Now, thank you, Mr. Chairman, for your consideration. I think Mr. Genet probably wants to join me in that.~~

Mr. Chairman: Thank you, Mr. Laidlaw..

Mr. Genet.

Mr. Genet: I have a submission ^{which is} ~~some~~ somewhat similar to that made by Mr. Laidlaw on behalf of the Hydro.

My submission is, of course, that this committee is the master of its own proceedings. It can allow cross-examination if it wishes to and it can prohibit it if it wishes to.

I asked the committee to look at the questions that have been framed by Mr. Shibley and to ~~ask~~ ask themselves what will happen to the Hydro if those questions are answered "no." Hydro will stand condemned by the committee of the House as incompetence ^{ts} and, worst ^{of}, crooks, ~~and~~ I don't know ^{or} any tribunal that has wider powers than that. And it seems to me, and I ^{strongly} submit to the committee, that for its own sake it would want a hearing, as ~~was~~ a result of which those findings had been made, to have been conducted with conspicuous fairness. So that if Hydro is condemned, it will not be in a position to say, "Well, we were never heard." We never had a chance; it was a kangaroo court." And I would submit strongly to the committee, ^{that for its} ~~the committee's~~ own sake, the person, the named person who stands charged here, should have the opportunity to ^{produce} ~~adduce~~ evidence which ^{it} ~~is~~ considered ~~as~~ material in its defense, and to cross-examine those witnesses which it feels have evidence to give, which is deprecatory.

The members of the committee are the members of the same Legislature which enacted the Statutory Powers Procedure Act, which gives to tribunals, which obligates tribunals of much inferior jurisdiction, of much less importance ^{than} this committee, it obligates them to afford the right to persons whose rights are going to be affected

Genet
(Mr. ~~Genet~~)

by those tribunals, the right to make full answer, the right to cross-examine witnesses and the right to make their case. And on behalf of Hydro I ask for those same rights here.

Again, and perhaps I'll appeal to Mr. Shibley -- I think he knows me well enough -- I don't propose to abuse those rights and ~~we are always~~ ^{we are always} in the hands of the committee who can put a stop to any action which it considers is an abuse of process.

Those are the ~~submissions~~ ^{submissions} I wish to make on behalf of Hydro.

Mr. Chairman: Thank you, Mr. Genet. Did you have anything to add, Mr. McCallum, or just --

Mr. McCallum: No, I have nothing to add, thank you.

Mr. Chairman: Well, let me say this--that I don't certainly hold myself out ~~as~~ ^{as} an authority on this and I'll be glad to hear comments from other members ~~of~~ ^{of} the committee. I welcome what you have just ~~said~~ ^{said} and I think it is good that it was said so that we can establish a procedure at this time.

It ~~is~~ ^{has been} my understanding that select committees only had the one counsel, and earlier, you see, I was trying to arrange a table behind here with the thought that that might be your permanent station in life.

An hon. member: Don't bank on it.

Mr. Chairman:..Behind our own counsel here and you would have opportunity to whisper to him from time to time if you thought the matters that you now speak of were being abused or certain questions should be asked that were not being asked. Now, that is my understanding of the way a select committee would operate. Now, I realize that that is not satisfactory for the type of protection ~~of~~ ^{of} that you would like to give your clients. I would remind you, however, that they are not on trial here, that ordinarily, and yet I appreciate what you say about the findings that

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(Mr. Chairman)

make. ~~xx~~ Ordinarily witnesses in the court ^{(room,} ~~room~~ are not entitled to have their counsel present and to cross-examine the ~~witnesses~~, other witnesses. Often they have counsel there, I realize, but simply to, perhaps, interject from time to time to the judge if they think the questions are abusive, But, generally speaking, counsels at a trial, at least witnesses at a trial ~~are~~ are not represented by counsel. And I would think that if we permitted any witness to bring with them their own counsel, we might be turning this more into a public spectacle than if we do it the way I understand that ~~a~~ select committees have operated in the past.

Now, I have made my statement of what my understanding is, but I am pleased to hear from any member of the committee who may have ideas in support of or other than what I have just stated. As far as who regulates our rules, again, I understand that there are precedents for this through operations of select committees down over the years, ~~and~~, not only in our own provincial House here, but in Ottawa and at Westminster.

Gentlemen, any other comments?

Mr. R. G. Hodgson: Mr. Chairman, . . .

Mr. Chairman: Yes?

Mr. R. G. Hodgson: ~~Does~~ does this mean that ~~all witnesses~~ ~~from~~ the counsel for the people involved would ^{S.A.D.M.E} ~~solicit~~ their questions through our committee counsel?

Mr. Chairman: That was my understanding of the way we would operate. Now, . . .

Mr. Shibley: It goes beyond that even.

Mr. Chairman: Mr. Shibley, maybe you should speak on it next.

Mr. Shibley: First, let me say that all counsel engaged with respect to Hydro and Canada Square are known to me to be excellent counsel, of excellent ^{ily} ~~repute~~ integrity, as well as extraordinary ~~and~~ ~~competent~~ competent. Dealing with the mode of proceeding, however, I had hoped that

Shibley
(Mr. ~~Chairman~~)

we would follow what has happened in the past, namely that the evidence ~~that~~ ~~we~~ be tendered through me. One of my purposes in asking these same counsel, in whom I have every confidence, that they will be complete, to provide to me statements of the evidence of the people within ~~their~~ ^{own} organizations that ~~is~~ ^{are} relevant to the issues before the committee, and this is one reason, of course, why I wanted some more precise definition of those issues from this committee, and you have accompl~~ish~~^{ish}ed that today.

To the extent that the examination of any given witness, at any given time in the hearing, is less than they might wish for, then I would expect them to approach me and ask me to fill out the examination of that witness.

I should tell the committee that in areas that I consider a cross-examination is called for, then I intend to conduct a cross-examination myself. I will go out of my way, as I have assured the counsel in question, to ~~apert~~ ^{el} them to the ~~a~~ witnesses I expect ~~them~~ to call from within the entities in question so that they may be prepared to testify. I am quite ⁺ prepared, as they will in any event discover, to tell them who are the other witnesses to be called, in sufficient ~~time~~ ^{time} to afford them an opportunity to feed questions to me, if you like.

I am very concerned about this proceeding becoming prolix. I understand that the committee has been authorized to sit concurrently with the House, and, because of this so doing, we only have the last three hours of the day between 3.00 and 6.00 available.

Mr. Chairman: *Plus a little more on*
~~of course~~ Wednesdays.

Mr. Shibley: Right.

Mr. Chairman: And it could sit in the evenings.

Mr. Shibley: I'm glad these are being volunteered because, *by the way,* I intended

Mr. Bullbrook: I think ~~am~~

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R.E.S.

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Mr. Chairman: The committee hasn't ^{volunteered as} ~~intended~~ as yet, ~~and~~ I am saying it could meet Wednesday mornings and evenings, but I'm not ^{so} ~~too~~ sure committee members ^{would} want to.

Mr. Shibley: I would like to think we'll get more mileage along the way. I am quite prepared to act as a counsel into any given evening, but I am very concerned because when you equate it with some other forms of proceedings, to permit two or more sets of cross-examinations of each witness in chief, ~~in~~ addition to the examination in ~~chief~~ is going to prolong this hearing almost interminably. We are only getting about a day and a half, equivalent, per week of what we otherwise would be getting if ^{you} ~~we~~ were able to sit full time on this matter.



(Tape H-20 - 1 follows)

We are only getting about a day and a half equivalent per week of what we otherwise would be getting if we were able to sit full time on this matter. Interestingly enough, the witnesses

~~to be called~~ are in large measure, in fact by far the greater majority of them, ~~are~~ from within Hydro and Canada Square. So that it would only be, I suppose, when let us say we were to call someone from the three competing companies, to give testimony that they would be adverse in interest, if you like, to the position ~~that~~^{of} Canada Square or Hydro, ~~and~~^{the} the area involved therefore, where that is a potential problem, is relatively limited. So the rules of the House, incidentally, ~~are~~ as I understand it from the Clerk, with whom I have consulted with your chairman, apply to the committee; ~~they~~^{you} are deemed an extension of the House for purposes of rules governing your proceedings; and your authority is limited to that set forth in the order constituting this committee. In the case of the Workmen's Compensation matter I gather that that was a case where the House itself passed a resolution ~~as to~~ authorizing payment to other counsel. ~~and xxx xxx xxx xxx xxx xxx~~

Mr. Deans: That's why, I asked.

Mr. Shibley: And notwithstanding that resolution, those counsel were nevertheless not permitted to ask questions of the witnesses.

Mr. Deans: That's right.

Mr. Shibley: And so there was a case where the House actually considered the matter of other counsel and, although having gone as far as permitting payment to them, did not permit their participation. This is just for your assistance.

Mr. Chairman: Any comments from any other members?

Mr. Bullbrook:

Mr. Bullbrook: ~~I wanted to ask~~ Frankly, I am not of any great fixed opinion on this myself; I see great merit in what the counsel for Canada Square and Hydro have said in connection with the rights of their clients. I want to point out to counsel that it is the responsibility of government to govern ^{write} ~~and legislate~~ as

~~U-20-2~~

~~(Mr. Bullbrook)~~

that may seem, the Premier decided not on a royal commission. Many of us in the Legislature felt that a royal commission, because of circumstances such as Mr. Laidlaw ~~had~~ brought forth, was the more appropriate vehicle for this type of investigatory power. But the government in its ~~own~~ wisdom felt that it should be handled by a select committee. I realize that it responds necessarily..... I ~~have~~ ^{ought to} achieved something, if I may, without being ~~defensive~~ ^{of} ~~of~~ ^{of} But ~~you~~ ^{you} talked about one of my colleagues' Freudian slips, ~~where~~ ^{and} Mr. ~~Genest~~ ^{Genest} talks about people being charged here, there aren't any people being charged. And it invites, of course, the next question, Mr. ~~Genest~~ ^{Genest is} counsel for Hydro. Is he counsel for Mr. Gathercole? Is he counsel for Mr. ~~Genest~~ ^{Genest} ~~Candy~~? If we give the right to Mr. Laidlaw and Mr. ~~Genest~~ ^{Genest} and Mr. McCallum to question, why don't the counsel for everyone involved have such equal rights? However, that doesn't unduly ~~restrict~~ restrict me, if it takes six months, to equitably and fairly do our job, ~~so be it~~ ^{so be it}. I also would bring to the attention of the chairman and counsel that in the order establishing our responsibility and I left my glasses upstairs again, it says, "the production of such ~~papers~~ ^{papers} and things as the committee may deem necessary for any of its proceedings and deliberations." Perhaps I have stretched the wording there. I would be inclined to think if we were of a mind, however, to permit counsel to cross-examine, that we could find a foundation for authority in that particular order to us from the Legislature itself. I think it is up to us to deem necessary in the circumstances, ~~and~~ ^{and} I perhaps ^I stretch the wording, but I think we could say to ourselves that we deem it necessary ~~and~~ fair, and just in the circumstances. I realize I am talking a long time and not giving you my opinion, but I wanted to voice these things because I think it is extremely fundamental. There seems to be some ~~historical~~ ^{historical} precedent for the position that we take, ~~but~~ I am not going a great admirer of the system in the United States, but I don't believe ~~there~~ that counsel and those people involved before their investigatory

committees are permitted to cross-examine. They are permitted only as I understand it, to protect the interests of their client before the committee, and that interrogation does take place through the counsel?

committee ~~and~~ and the individual members of the ~~committee~~ ^{part-time} ~~committee~~ building up or placing ~~it~~ I don't use that as any ~~pretext of anything~~

~~rule 3.~~ ~~ending.~~ I wanted to voice these particular thoughts for the further consideration of the members of the committee. My present

disposition would be that, notwithstanding that it sterilizes ^{the} able
counsel and perhaps on the face of it seems less than just and

equitable, ¹¹²⁰¹ ~~has~~ the government, which has the responsibility to govern, chosen to afford those protections which we have given

people under the Statutory Powers and Procedures Act, all they had to do was submit this entire matter to a royal commission.

And I think perhaps that we have to presume that the government had some intention in bringing ^{this} before ^a ~~the~~ select committee. I

say in effect this, that probably we have power ~~to examine~~ it is
our decision so to do ^{to} permit counsel to cross-examine. There

is certainly some great disadvantages apparent in it. On the other hand, there is are weighty problems of not only justice

Mr. Chairman: I don't think you have been one bit of

help to me, Mr. Bullbrook;

Mr. Renwick: Mr. Chairman, if I may comment without

giving my version of political history ~~as such~~ or political theory, this is after all a committee. It is unfortunate that

it has become customary to name the person who is retained by the committee to assist it in ~~the~~ the efficient dispatch of its

responsibility, to name that person counsel, because that immediately calls for the concept of an adversary system and leads to the

suggestion that this is a trial, or whatever other connotation
a trial people may want to suggest that it is. I think we have

got to move very fairly, cautiously and carefully in making
certain that the discharge by this committee, as a committee of

certain that the discharge by this committee, as a committee of
Legislature, of its responsibilities with respect to a matter

~~H-20-4~~

~~(Mr. Rowland)~~

which has been determined by the assembly to be one of public interest, is not turned into a forum in which private ^{rights} ~~rights~~ are decided. We have no statutory power of decision. We have only those authorities which enable ~~ix~~ us to carry out our job. ~~He~~ I think that we have got to preserve the openness of the committee, its thoroughness and its informality, ~~and~~ I think that the members of the committee are quite prepared at any point in the course of those proceedings to hear intervention by counsel, not for the purpose of leading evidence or cross-examining ~~the~~ ^{but} for the purpose of indicating to ~~members of the~~ the committee that in their judgement their ~~client's~~ client's position is being adversely affected in a matter which may lead to the committee drawing incorrect inferences from the facts, or not having the facts available. And I am certain that ~~if~~ the proper procedure is for the committee in such circumstances to direct counsel of the committee to consult with counsel for the parties to make certain that those matters are dealt with. Now we cannot, Mr. Chairman, work every public instrumentality into the adversary system. I don't think I need to ~~say~~ ^{say} to the able counsel who are here to indicate that the adversary system in a courtroom or the equivalent of a courtroom does not necessarily determine the truth of the matters before the court. I think that our obligation is to make certain that we do get the facts, that we report on them thoroughly and that we report back to the House, having discharged in a committee atmosphere that responsibility. And I would ask, Mr. Chairman, that until the committee is convinced that there is good reason to depart in a particular area from what even though we don't have.

H-21-1 follows

H - 21 - 1

Chairman: Mrs. MacBeth

(Mr. Renwick)

I would ask, Mr. Chairman, that until the committee is convinced that there is good reason to depart in a particular area from what, even though we don't have all that experience in the Legislature, nevertheless is the tradition ^{AL} ~~of the~~ way committees operate, that we do not depart from it.

I have confidence in the committee system, I have confidence in the counsel whom committee has retained to make certain that he works in the utmost co-operation with counsel for all parties who are here and all persons who are not represented by counsel, to make certain that they are dealt with fairly and temperately. Mr. Chairman, I don't know again whether that has been of any assistance but that is my particular view on this question which has been raised by Mr. Laidlaw and by Mr. Genest, ^{who} ~~and~~ quite rightly I believe, ~~has~~ ^{has} perhaps overstated the proposition in order to have it carefully dealt with by the committee.

Mr. Chairman: Any other comments?

Mr. W. Newman: ~~I think~~ Mr. Chairman, to follow what Mr. Renwick has said, I think what in effect we are saying is that the counsel for whoever it may be should have full and free access ^{through} ~~to our~~ counsel for questioning and cross-examination. Is that the way the committee thinks?

Mr. Chairman: That is the way I think, and when I said you were no help to me, Mr. Bullbrook, I meant that you gave me sort of equal arguments for both sides.

Mr. Bullbrook: That is my usual attitude. I try to go to the fence really.

May I suggest that in view of the comments made by myself and others that, without restricting the conversation now that perhaps we might - would it be inopportune to ask Mr.

H - 21 - 2

(Mr. Bullbrook)

Laidlaw if he wanted to further comment on anything?

Mr. Chairman: Certainly I don't want to restrict Mr. Laidlaw or any of the counsel here from making representations. I was prepared to sum up what I thought was the conclusion of the committee but -----

Mr. Bullbrook: By way of example, if I may, I brought up the point, validly or otherwise, that the government chose this forum, recognizing the normal restrictions of this forum. Had the government in its wisdom wished to afford these rights under the Statutory Powers Procedures Act, all they had to do was of course appoint a Royal Commission and I am interested in the response of that nature because maybe my mind could be changed.

Laidlaw
Mr. Bullbrook: Well may I take advantage of that before we get lost in something else? I am very grateful for Mr. Bullbrook's comments and Mr. Renwick's of course, and the discussion and the consideration the committee is giving to this matter. Perhaps my response right now is going to be the last vestige of the adversary system that Mr. Renwick spoke of until the committee is completed. It takes the form of a reply, and may I just say these things very briefly to you so that at least you will have my position recorded and at the end one last plea too.

First of all, as ^{to} Mr. Bullbrook's observation that it is the right of government to govern and we therefore have foreclosed ourselves in effect by setting up this form rather than a Royal Commission.

Mr. Chairman: Mr. Laidlaw, I wonder if you would come forward and use that microphone?

Mr. Laidlaw: Am I not being heard?

Mr. Bullbrook: Please sit down.

Mr. Laidlaw: I don't speak very well sitting down

H - 21 - 3

(Mr. Laidlaw)

but I will try it. You have got me at a disadvantage.

Mr. Chairman: You can stand up with the microphone.

Mr. Laidlaw: No, it is all right, sir. Thank you very much.

To say that, may I say respectfully to you, Mr. Bullbrook, I think involves a faulty piece of logic. That is to assume that there is only one reason why this forum was set up as the appropriate forum and no other, and to draw from it the inference that we are not to be accorded the right of representation here that we would otherwise have been outside the House, because there is no doubt about it, we would have had that right if we had been appearing before a Royal Commission, and I think it does less than justice to the government of this province to suggest that they deliberately chose a forum to review these matters that would exclude and restrict the right of representation that this very government has given to anybody who would have had to defend themselves in the same process outside this House. I think that is not a suggestion I would welcome, it is not one that I adhere to, and respectfully I think whatever reasons motivated the government in selecting this forum, that could not have been one of them.

The next point I would like to answer is that my submissions appear to have been taken to be an attempt to liken this proceeding to a trial. I retract the reference, it was an aside rather than anything else. What I did do was to liken it to a Royal Commission in which I say the very questions that you have raised, Mr. Chairman, and the others, if we allow me representation - Canada Square that is, and Moog, and let there be no doubt, I act for both of them, there is no question about that - that to allow me representation where is it going to stop. Those are the very same arguments that have been presented in the past when these questions first arose about six

m

(Mr. Laidlaw)

or seven years ago in the Royal Commission which had to inquire into ~~the~~ McDermott and Feeley, and you, I am sure, at least the legal members in this room, and I am sure everybody, will remember that that was the point in time where the issue as to the right of a witness ^{to} because those people were only witnesses before that inquiry, just exactly the same as my clients are here ^{to} the right of a witness to representation was raised and the answer given there initially by Mr. Justice Roach on the inquiry was "If we allow this here where does it stop?" Every witness will be allowed representation. The court of appeal was quick to say on a reference to them, "Oh yes, but there is a difference, these people's rights are very much affected and it is open to the commissioner to in his judgment determine in each particular case who really is being seriously affected and who is not and to play it ad hoc so to speak, and to allow that representation when it appears necessary in the interests of justice to do so, and now those very principles have been carried into the legislation in this province. So respectfully it is retrogressive to now offer as an argument for ^{the} restriction of my right to appear here the very same arguments that were overruled, or I should say ruled upon, because it was a reference that was sent to the court of appeal, six or seven years ago, I may be wrong in that time, time seems to compress itself these days, 10 years ago is more like it, and which have not been carried into the statutes of this province in one way or another. That whole philosophy now is well accepted.

So, Mr. Chairman, I am very grateful for the right to at least put once again my submission. I ask respectfully for the right to take part in these proceedings even on a restricted basis, even, sir, if it were left to me that you leave the door slightly ajar that I don't get what I ask for, but rather leave

H - 21 - 5

(Mr. Laidlaw)

its open to me and to my friends Mr. Genest and Mr. McCallum in the same way, to raise this with you again when the proceedings go on. Say for now, if you will, let us wait and see." Don't shut me out, because I agree with Mr. Shibley; who incidentally, I say with the greatest of respect for Mr. Shibley, both of us have opposed each other and appeared on the same side so many times I think we know each other's minds before the mouth is open really - Mr. Shibley says in one breath, "It will take too long if all of these people get into the cross-examination, I'll look after it," and I am sure he will in a very skilled and effective way and then on the other hand in sort of talking to ~~himself~~ himself coming around the corner says, "Well, it really won't take that long after all because the conflict, if there is any, is going to arise not when we hear from Hydro necessarily or Canada Square" - I know what Canada Square is going to say and I am certainly not going to cross-examine my own witnesses - and I don't think I will find the necessity to even raise my voice, I don't know how it is going to go, but when the Hydro gives evidence, but what about the third parties that come in? Now there is where I think we are going to find the bone and that is a very narrow part of the hearing but one that is very important - third parties who might come in with a piece of information on the outside as to which I really have no - I shouldn't say advance warning because I am sure Mr. Shibley will make that available to me - but who may very well - I don't know and I don't want you to think I have any information in that respect, but if there is going to be conflict that is likely where it is going to be. So I say even if you give me half a loaf I will go away with that, content. Leave the door open, let me raise it with you when it appears very obvious in my submission that the right to a separate cross-examination then is available, rule on it at that time, say I can ask a question; say Mr. Genest can; say one of us can, but give us at least a

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~~M.F.~~

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(Mr. Laidlaw)

right to defer this decision now if the feeling of the committee was against me now, defer it until the point where it becomes necessary to raise it again.

Tape H - 22 follows

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B.G.

H-22-1

Mr. Laidlaw)

...now, if the feeling of the committee ~~as~~ was against me now, defer it, until the point where it becomes necessary to raise it again.

Mr. Bullbrook: I just want to make a comment and I want to ask a question if I may. All right? First, I want to make ^{the} a comment that I don't think, and I don't want to be involved in a great argument; I don't think I said that the government was motivated in appointing this ^{committee} ~~I said that it would naturally flow~~

Mr. Laidlaw: No.

Mr. Bullbrook: I said that it ~~would~~ naturally flow. Do you follow me? One would presume that you recognize that flow, in the appointment of this committee. Do you, as a matter of ~~the~~ principle, see any distinction between the function exercised by a select committee, being elected by the public, and the quasi-judicial function of a ~~see~~ royal commission, do you see any distinction there?

Mr. Laidlaw: No, in a practical sense I don't. I don't ~~than~~ think if you call a dog by another name, it becomes any the less a dog, or a cat, I mean let's not - I just chose that. The function is an enquiry, and the result will be the same, and I think it is just because we are ~~and~~ sitting under this roof rather than perhaps a roof downtown that I have to make these submissions in the first place.

Mr. Deans: Mr. Chairman - may I

Mr. Chairman: Mr. Deans.

Mr. Deans: I don't think that there is any problem in the counsel raising at some other appropriate time, with the committee or with the counsel for the committee, the need for them to do other than what was set out in the preliminary stages. And I think Mr. Renwick said so, that is,

Mr. Renwick: Yes.

Mr. Deans

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Mr. Deans: - if at some point in the proceedings, it is felt necessary to change slightly or considerably, the way in which we have ~~previously~~ previously operated, then we are going to consider that. We too, want to make sure that everyone has had an opportunity to express their views and to have their views heard.

I will just recall, if I may, and I refer to ~~it~~ ^{that} a number of times, ^{that} in the Workmen's Compensation Board hearing, one of the delaying factors was the need for the counsel for the witness to whisper in the ~~ear~~ ear of the counsel for the committee, who in turn then had to evaluate the question, attempt to phrase it in his own language, and to ask it, and then to ask the counsel for the witness if that was what he wanted asked. Therefore, that in itself is a delay; and so I think that if we reach a point in these hearings where it is obvious to us that a question from the counsel for any witness would be more appropriately asked by that counsel, than by any one of us or by the counsel for the committee, then we ~~we~~ should consider that at that ~~that~~ time.

Mr. Chairman: Mr. Walker;

Mr. Walker: Mr. Chairman, I am not prepared to leave the door ajar. I am prepared to go further than that. It seems to me that this is an inquiry and in many respects, it is not dissimilar to a royal commission and there is only one ultimate gain out of this type of inquiry and that is the truth and there is only really one way of finding out the truth and that is through cross-examination of the ~~witnesses~~ witnesses who appear. It is not sufficient that evidence be adduced. There has to be an adequate cross-examination. There are parties within who have competing interests, so to speak. ~~the~~

May 15th, 1973

5.10 - 5.22 pm

H 22 - 3

~~AA~~

(Mr. Walker)

The ~~interests~~ interests of the committee may not necessarily be the interests of the representatives of Canada Square and may not necessarily be ^{those of} the representatives of Ontario Hydro. I think it would be inappropriate for us to require counsel for the committee to absorb their role and it might well be considered unfair for us to expect that Ontario Hydro and the Canada Square would participate or want us to take on their role. It seems to me that the various counsel can sort out among themselves the manner in which ~~the~~ ^{an} extensive ~~delay~~, the natural delay of cross-examination, needless cross-examination, can be avoided, and the counsel ^{are} well-known to be quite competent and I am sure that they will follow that particular role.

It would seem inappropriate for us to take on a role which is something less than what we have required other quasi-administrative tribunals and ^{inquiries and} ~~inquests~~ commissions to follow. I think it would be quite wrong for us to not allow counsel for the parties with possibly competing interests the opportunity, not only to cross-examine, which was brought out by Mr. ~~St~~ Shipley, but also to ^{adduce} ~~produce~~ evidence where necessary.

And ^{while} ~~we~~ we may say ^{that} ~~that~~ there are individuals, ^{well} ~~there~~ are parties, not on trial, in fact the ~~of~~ recommendations may have the ultimate result that individuals are, so to speak, tried. In my opinion, counsel should be ~~be~~ afforded the right to cross-examine, ~~not~~ particularly the Hydro and the Canada Square people. It may be that we may have to expand the number of counsel as time goes on. It may be found that some individual appearing before us suddenly has an interest that ~~may~~ warrants a representation and cross-examination and possibly the adducing of evidence. Our sole role is to get to the truth of the matter.

It would be inappropriate ^{is} for us to settle ~~for~~ for anything less and it is quite possible that we may inadvertently do that.

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 B.C.

Mr. Chairman: Mr. Renwick.

Mr. ~~Renwick~~ Renwick: I really just have one comment to make to Mr. Laidlaw on his remarks. The ~~existence~~ ^{fact} of this committee in its ~~initial~~ ^{first} deliberations cannot in any way be considered to have deprived his client or any other person ~~who~~ ^{who} comes before it, of a fair and proper hearing. Now, Mr. Chairman, that does not prejudice the issue that the only way a fair and proper hearing by this committee can take place is that if we make it into some other kind of hearing. And therefore I ~~just~~ take exception to the suggestion that we are now and henceforth ~~until~~ until we accede to your views, Mr. Laidlaw, depriving ~~anybody~~ ^{anybody} of anyone, of any of their rights. But I am simply saying, and ~~I~~ again, ⁱⁿ this instance, I think it is in line with what Mr. Laidlaw said in ~~the~~ ^a manner which I considered to be a misunderstanding of the committee's role, we are here as a committee. The committee, ~~its~~ members themselves can question should they wish to question. We don't delegate permanently to counsel for the committee ^{the} ~~a~~ right to question, if we want to question ~~we~~ are interested ~~in~~ in the efficient dispatch of the work, and we are saying to ~~your~~ counsel for all parties, and to all witnesses, that we will be fair, ~~and~~ ^{if} anyone thinks that we are not being fair, they are open to speak to the chairman of the committee, to ~~also~~ ^{our} raise the point, or to ~~as~~ speak informally to ~~our~~ counsel, to have our counsel raise it with the chairman. And the matter can be aired at that time. We have a difficult role of discharging a public obligation, which must of necessity, in the view of the ~~individual~~ ^{individual} private citizens before us, in some sense, infringe on their perspective of what their private rights are. And we are equally interested in the protection of private rights before a public ~~body~~ ^{body} audience such as this committee.

And I think within that framework, I think we have the capacity, the intelligence, the traditions and the skill to make it work. ~~We~~ ^{It} is a ~~world~~ ^{world} in the world

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 B.C.

(Mr. Renwick)


as to how these things should operate, but we are not doing a service to the Legislature or to the legislative process in the Province of Ontario, if we do not allow ourselves to function as a committee, which is what this is.

Mr. W. Hodgson: Mr. Chairman.

Mr. Chairman: Yes, Mr. Hodgson.

Mr. W. Hodgson: I think we should give a lot of consideration to what all members have contributed today, and ~~not~~ particularly Mr. Laidlaw, who has ~~complied with our request that~~ ^{request that} ~~we~~ ^{we} ~~do, leave in abeyance until maybe~~ ^{do, leave in abeyance until maybe} ~~the format the~~ ^{this time next week when we} ~~we can decide what procedure is going to take place~~ ^{can decide what procedure is going to take place} IN the meantime, I am ~~quite sure~~ ^{in favour} of going along with Mr. Laidlaw ~~and~~ ⁱⁿ saying we don't make a ~~presentation of this~~ ^{firm decision at} particular meeting ~~as to the course~~ ^{the procedures} will take.

Mr. Chairman: Let me say this, that in my mind, I ~~adopt~~ ^{adopt} the arguments which Mr. Renwick, ~~which Mr. Laidlaw~~ ^{which Mr. Laidlaw} has put forward. It is a committee and I am not ~~any~~ ^{other than a} anxious to turn it into anything ~~extra~~ ^{committee.} that precedent I don't think ~~the president~~ ^{that precedent} allows us to be ~~the~~ ^{the} witnesses to be represented by counsel. And I want to leave the door open to this extent, that if anybody such as yourself or others that may represent ~~you~~ ^{witnesses}, feel that an injustice ~~might~~ ^{at any time} might be about to be done, or something is wrong in our procedure, then ~~that~~ ^{that} we will listen to that ~~person~~ ^{person} -



(Tape H-23 follows)

H-23-1

(MR. Chairman) make

my representation

~~or others that feel that an injustice might be about to be done~~
~~or something is wrong in our procedure then that we will listen to~~
~~that~~ representation. But to allow the kind of request that you
are asking, I think, ~~we are~~ ^{we are} breaking our own rules and our own
precedents, ~~and~~ I will be glad to get further advice on this. But
also I think ~~we are~~ adopting the argument that Mr. Renwick
has put forth, ^{will be} changing the nature of the inquiry into this
matter, ~~but~~ I ask you, in the sense that Mr. ^{will be} Hodgson has just
suggested, ~~that~~ to leave the door open to that extent, if you feel
we are getting off the rails in any bad way, you will bring it to
our attention.

Mr. Laidlaw: Thank you very much, Mr. Chairman, also
the other members of the committee. So we don't extend this, I
just want to say through you sir, to MR. Renwick, I hope I didn't
say anything that suggested that I anticipated unfairness any more
than I would have if I was making the same representations to a
body outside this House, because that really wasn't the thrust
of my submission to you.

Mr. Renwick: Not in any way. It was a most valuable
contribution.

Mr. Laidlaw: And I don't anticipate that.

Mr. Renwick: Because we have problems ourselves about
the onward development of the committee system of the Legislature.
We want to do it properly.

Mr. Chairman: Mr. ^{Glen} Hodgson.

R.G.

Mr. Hodgson: Mr. Chairman. I hope that counsel will
caution witnesses where it is needed and ^{give} ~~us~~ such protection as
necessary towards those witnesses if such occasion should arise.
I also want to go back to another earlier comment about the
limitation of two possible hours a day or three possible hours a
day. It seems to me we should proceed ^{and} ~~when~~ we have authority
to proceed concurrent with the House; this should also include
nights that the House is sitting, ~~and that we should proceed with~~
all dispatch to arrive at our final conclusions as expeditiously
as we can.

H-23-2

Mr. Chairman: What is the thought of the members present? Are you opposed to night^s sittings?

Mr. Walker: I suppose, Mr. Chairman, the fact that we have authority that allows us ~~to~~ sit concurrently with the House, does not necessarily exclude that period leading up to the opening of the House?

Mr. Chairman: You mean the question period?

Mr. Walker: No, the period up to 2 o'clock ~~during~~ⁱⁿ the day, *the morning*.

Mr. Deans: The House is not sitting then.

Mr. Walker: I know it isn't; that is precisely the point I made, ~~that~~ I do not think that.

Mr. Chairman: We are not limited to sitting concurrently.

Mr. Walker: We are not limited to sitting when the House is sitting. We may sit ~~at~~ at times other than when the House is sitting.

Mr. W. Newman: May I suggest *for our laws of* ~~that as far as sitting,~~ on Tuesday from 3 o'clock to 6 o'clock, *afternoon* on Tuesday from 8 o'clock to 10 o'clock; and Wednesday ~~from 3 o'clock to 6 o'clock; and~~ Thursday, 3 o'clock to 6 o'clock, and 8 o'clock to 10 o'clock at night?

Mr. W. Hodgson: 10:30 pm.

Mr. Bullbrook: You obviously have available to you staff and talent that we don't. When do you do your constituent work?

Mr. W. Newman: The mornings, about 6 o'clock. Try get up early.

Mr. Chairman: You spoke so quickly, Mr. Newman, that I didn't —

Mr. W. Newman: *It was* I suggested we sit Tuesday, Wednesday Thursday, anyway, from 3 o'clock to 6 o'clock, *night?*

Mr. Chairman: That was the thought.

Mr. W. Newman: Why not sit Tuesday and Thursday evening also, from 8 o'clock to 10 o'clock?

Mr. Chairman: Tuesday and Thursday evening, from 8 o'clock

Mr. W. Newman: Or 10:30, whichever you like.

Mr. Chairman: Is that agreeable to the majority?

Mr. Gaunt: I am wondering, Mr. Chairman, if for the first week we take the 3 o'clock to 6 o'clock time and see how it goes and from then on make the decisions, Because it may go very well; it may go much better than we anticipate and we might not have to do that.

Mr. Chairman: That's I think a good argument. At least a good position to take.

Mr. Deans: I just wanted to clear on something. Is it necessary to swear witnesses?

Mr. Chairman: That is a good point.

Mr. Bullbrook: ~~Examine~~ The order says "examine under oath."

Mr. Deans: Does it say examine under oath?

Mr. Bullbrook: I believe it does say; yes.

Mr. Chairman: That solves that problem.

Mr. Deans: That's what I wanted to find out.

Mr. Chairman: Mr. Shipley says he would like them to be sworn and the order says so. Mr. Clerk, would you be prepared to swear these people?

Mr. McPedraie: Certainly, to examine witnesses under oath.

Mr. Deans: The chairman would swear them in, surely?

Mr. Shipley?: Or any member of the committee is usually authorized.

Mr. Bullbrook: Before you finish, are we not going to sit on Wednesday's at all? Is it Tuesday and Thursdays?

Mr. Shipley: No, it is just this week that I understand you can't sit Wednesday.

Mr. Chairman: Yes, we are not to sit tomorrow or Thursday, Mr. Shipley wants some time for preparation. Next week we will sit Tuesday's, Wednesday and Thursday from 3 o'clock to 6 o'clock. The following weeks we may get into the evenings on some of those days. Now you have all got copies of the contract which I expect you to memorize for the next meeting.

One other point that I should deal with, and it is ~~the~~ ^{the}

H023-4

(Mr. Chairman)

matter of Speaker's warrant. I discussed it with Mr. Lewis and told him ~~that~~ ^{of} the resolution that we had made here, the decision that we wanted all people summoned by Speaker's Warrants, He has evidently discussed it with the Speaker of the House, that is Mr. Lewis; I didn't discuss it with the Speaker, but I discussed it with Mr. Lewis. He says the letter that the clerk would ordinarily send out is the authority; that they only use these writs, or Speaker's Warrants, after a refusal and that is ^{the} a custom, now you can say differently as far as the Workmen's Compensation Board is concerned. But in effect, I think the Speaker has told us, no, he won't proceed this way. That has come to me through Mr. Lewis, not directly from the Speaker. Now, Mr. Shipley, do you have anything to add to that? You were there when I was discussing it with Mr. Lewis.

Mr. Shipley. Yes, your chairman and I both had the benefit of Mr. Lewis' comments and I must tell the members of the committee that I am not terribly anxious about this problem and that we can, in very large measure, rely upon the cooperation already demonstrated by counsel for Hydro as well as counsel for Canada Square, and that as with other types of proceedings, only unless and until it becomes necessary to have a warrant issued in the sense that someone will not respond to a request to attend, should the warrant.

Mr. Chairman: Sort of like a bench warrant, is it?

Mr. Shipley: That's right, and I think that is probably Speaker's attitude in the matter. That it is quite an extraordinary thing to issue a bench warrant and a Speaker's Warrant should only be used if necessary. ~~XXXXXXXXXXXX~~

Renwick: 2

Mr. Walker: ~~XXXXXXXXXXXXXXXXXXXX~~ Some judges issue bench warrants just like that.

Mr. Walker:

~~XXXXXX~~ In effect, all people are being treated equally in this, in that they will receive from the clerk, I guess it would be, ~~the~~ or the Speaker, the request to attend and failing the attendance, receive the appropriate subpoena?

Mr. Chairman: In other words the request or the letter from the Speaker is the demand?

H-23-5

Mr. Walker: IN effect, it is a warrant, so I think we are accomplishing the ends that we may well have desired.

Mr. Chairman: But the letter is the demand.

Mr. Renwick: My point was simply that all witnesses be treated identically and that nobody be able to say, well, one came under one auspice and another came under another.

Mr. Chairman: They ^{would} ~~would~~ all have the letter of demand from the clerk.

Any other business to come before the committee at this time?

Gentlemen, thank you for your attendance. We are adjourned.

The committee adjourned at 5:30 o'clock, p.m.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, May 22, 1973.

24-15

APPEARANCES

Committee members: J.P. MacBeth (chairman) - York West
W. Hodgson - York North
R.G. Hodgson - Victoria-Haliburton
J.N. Allan - Haldimand-Morfolk
G.W. Walker - London North
L.C. Henderson - Lambton
W. Newman - Ontario South
M. Gaunt - Huron-Bruce
J.E. Bullbrook - Sarnia
I. Deans - Wentworth
J.A. Renwick - Riverdale

A. McFedries (clerk of the committee)
P. Moore (assistant clerk)

Committee counsel: R.E. Shibley, QC

Ontario Hydro counsel: Pierre Genest
James McCallum

Canada Square Counsel: Douglas Laidlaw

Chairman, Ont. Hydro: George E. Gathercole

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

H-24-1

May 22/73
3.10-3.15 P
E.M.

The committee met at 3:10 o'clock, p.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, we have a quorum. We now have a representative from each of the three parties so I think it is reasonable that we should proceed and I call this third session of our new Hydro building committee to order.

Last Meeting we were discussing what rights, if any, counsel for witnesses might have to intervene. We adopted at that time that they would have to ask their questions through our own counsel, Mr. Shibley, but I did agree that I would discuss the matter with Mr. Lewis, the Clerk of the House. Now, Mr. Shibley wasn't present at that meeting that was subsequently held but the three counsel that are with us today were and, after some discussion, this being a Select Committee, Mr. Lewis and those of ^{who} us ~~were~~ present thought it might be all right to allow counsel the right to ask certain questions at certain times. Now, that would be when counsel for a witness thought something that was important had been overlooked or a question not asked and at that time they might rise at the end of the examination by our own counsel and request of me, leave to ask a few questions. I would then put the matter to the committee and say, "Committee, is it your wish?" or words to that effect, "Is it your wish that you hear ~~from~~ or permit Mr. So-and-So to ask this witness ^{some} ~~a~~ questions?" and if you agreed, ~~he~~ ^{we} would then proceed to ask those questions but the committee could terminate them at any time if the committee thought they were going too far.

Mr. Lewis thought that would not be stepping too far out of line and I agreed to put that proposition to you today,

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E.M.

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(Mr. Chairman)

but I, again, said it was the committee which would have to determine whether that was a reasonable procedure or not. I now ask you to give some thought to that. But I would ask Mr. Shibley, since he wasn't ~~at~~ there, if he has any comments to make in regard to the suggestion.

Mr. Shibley: Well, let me say to begin with that I regard counsel who are retained for Hydro and for Canada Square very highly and it would doubtless relieve me somewhat if they had the opportunity to participate. My concern is as follows: First, that normally if this were another type of proceeding a witness would be called as someone's witness and in respect to that witness there would not be permission to ~~have~~ lead him, the cross-examination to take place by others opposed in interest to that particular witness. It would create some question in my mind as to the form that an examination by other counsel should take, if it is someone from Canada Square in my view it would be wholly inappropriate for counsel for that company to be permitted to examine witnesses from his own client, so to speak. And certainly inappropriate to permit cross-examination, and so on.

Now, that is the difficulty that obtains once you adopt a posture that some kind of a contest is under way as opposed to this committee being a fact-finding committee.

The other comment I would like to make is that the House itself appears to have established some kind of precedent in the Workmen's Compensation Board case. In that particular instance, the House apparently considered it necessary to pass an order of the House for payment of other than the committee's counsel but even then restricted participation by such counsel. In other words, it said they were not to be permitted to ask

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E.M.

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(Mr. Shibley)

questions. By inference therefore the House seems to have retained unto itself the right to say whether a committee of the House should have other counsel participating by way of asking questions. So I just advert to that as a precedent which by implication suggests that this committee would be exceeding the authority ~~it~~ vested in it by the order of the House. When one looks at the order proper, there is nothing in it, in my view, that extends to the permission to permit the committee in its turn to have other counsel introduce questions to witnesses. ~~See~~
~~have these two circumstances~~

(Tape H-25 follows)

(Mr. Henwick)

the view of the individual private citizens before us, ~~some~~ in some sense, infringe on their perspective of what their private rights are and we are equally interested in the protection of private rights before a public body such as this committee".

I think that that, Mr. Chairman, states the view which I have, having had the opportunity over the weekend to consider in some depth and with much sympathy, the submission made by Mr. Laidlaw and by Mr. Genest to the committee.

Mr. Chairman: Any other comments?

Mr. Allan: Well, Mr. Chairman, my only comment would be that I sat through the hearings of the Workmen's Compensation Committee and I thought the plan that was followed there worked exceedingly well. I think you are acquainted with the procedure before that committee. Counsel for any of those who were appearing had the privilege of asking any question that they wished or was approved by the counsel for the committee and through the counsel of the committee, and I thought it worked exceedingly well.

Mr. Chairman: Thank you, sir.

One distinction that Mr. Lewis made between our committee and what was done at the Workmen's Compensation Board, of course, was that that was a standing committee, being a little ~~more~~ closer to the formal rules of the House than our select committee.

I don't know if we have had enough discussion to come to a decision whether ---

Mr. Pullbrook: I wanted to ask a question. I don't have the order in front of me, Mr. Shibley, I am sorry, but I voted on May 9 my feeling that without enlarging our perspective ~~and~~, that we might find it within the terms of that order to

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3.15-3.20 p.m.
E.H.

H-25-3

(Mr. Bullbrook)

permit us to row our own boat, so to speak, in that the words were used "to command and compel attendance before the said select committee of such persons and ^{the} production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations". Now, coupling the word "deliberations" ~~next~~ with the words "deem necessary" it is unduly subjective to say that we can come to a conclusion if we deem it necessary for the proper undertaking of our purposes and the outcome of our deliberations to permit counsel to ask questions if we see fit.

Mr. Shibley: I think you are reaching in terms of that where you are confined in that way.

Mr. Bullbrook: Well you are ~~arguing~~ ^{not arguing} ~~that~~ ^{that}

Mr. Shibley: I think the words that you ~~refer to~~ relate to the availability of ~~the~~ ^{the}

Tape H 26 follows

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3.20-3.25 p.m.
E.M.

(Shibley)
(Mr. Chairman)

~~Those are the things you advert to~~
to the availability of witnesses and the requirement of production of documents.

Mr. Bullbrook: I don't necessarily agree with you in that respect, sir, but I tell you that I regard you as our committee counsel and I am going to abide by your opinion in that connection.

Mr. Chairman: What is the wish of the committee?

Mr. Walker: Mr. Chairman, I just reiterate my comments of last week, that in substance I feel that there are somewhat competing interests as affect this particular committee and it seems to me appropriate to allow the latitude of cross-examination and if necessary power to adduce evidence necessary to these competing interests which at the present time I could merely define as two interests, that of Canada Square and that of Hydro. It may well enlarge to something greater than that but at the present time I would feel quite safe in allowing ^{these} for both parties the opportunity to both adduce evidence and to cross-examine. I think the proposal that you have put forward based on your discussions with the Clerk of the House while not going the total distance, at least accomplishes ^{a significant} part of that. I would be prepared to support it.

Mr. Chairman: Then is that agreeable to the committee if we adopt what Mr. Walker just said? I know that Mr. Shibley has some reservations and some members of the committee have, so I would ask the counsel for the witnesses to keep that mind, that we have some reservations but if at any time, to adopt you Mr. Renwick's words again, we feel the committee is being unfair or an unfairness will result if one of you do not intervene, then I would ask you to intervene and we will put the matter to the

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(Mr. Chairman.)

committee at that time.

Mr. Bullbrook: Before we begin, I want to record something with your permission.

Mr. Chairman: Yes.

Mr. Bullbrook: That is, on May 9 I made mention^{of} the fact that one would presume that appointing a select committee rather than a royal commission, the government would understand, in regard to the rules that prevail in connection with the establishment of a select committee and having regard to the rights of individuals under our legislation, especially the Statutory Powers Procedures Act, that would inure to the benefit of parties before a royal commission, that the government would have understood the distinction there. Mr. Laidlaw, in replying to that in his vigorous and normal fashion, talked about the question of motivation. I want to make it amply clear that I wasn't inferring that the sole motivation of the government in appointing a select committee was to obviate any rights parties before this select committee might have. I want to record again if I may that one could infer, perhaps, from the establishment of a select committee, that the government in establishing such select committee understood perhaps, fettering and restriction that might flow from such establishment, but not that that was the motivation for the establishment of the committee.

Mr. Chairman: Thank you, Mr. Bullbrook. Well now, I am going to hand the procedure over to Mr. Shibley in just a moment, but he ~~has~~ has asked that I should support him in this - and I do - it is in regard to his examination of witnesses. He has a plan, as most counsel do, for bringing forth the evidence and the witnesses, and he has asked the committee

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E.M.

(Mr. Chairman)

to restrain themselves in asking questions and perhaps let him follow his plan of interrogation first and then at the end for the committee members to come in. Now, I think that is a reasonable suggestion and I would ask that the committee try to abide by it.

Now, Mr. Shibley^{of the}~~we will~~ carry on.

Mr. Shibley: Thank you, Mr. Chairman.

By his last remarks, I hope the Chairman did not infer, as I did not intend, that committee members never interj^{Key} because when we are in ~~the~~ areas of the evidence, I would expect such spontaneity, but with 11 members one can only imagine ^{again} that we have to bring some order to the hearing. I might as well go on and explain to you the purpose of the presently empty binders that are now prepared for you. My intention is that as the evidence proceeds and exhibits are tendered through various witnesses, that copies of the exhibits that are in evidence be made available to each of the committee members to be incorporated into your own personal exhibit book. This, for purposes of ~~immediate reference as the witness is being examined and for future reference when you are deliberating on the matters before~~ before

(Tape H-27 follows)

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E.M.

H-27-1

(Mr. Shioley)

this-for-purposes of immediate reference as the witness is being examined, and for future reference when you are deliberating on the matters before this committee. As we go along, I am going to ~~ask~~ ask the Clerk to prepare updated indexes to your exhibit books. The documents are very a numerous. I have to this point of time received documentation from Hydro; and I have not yet ~~reviewed~~ reviewed it, but the files of Canada Square are said to be available to me for examination in the office of their counsel; and I intend to go over those, and have copies made of those as well. As with some of the other people, I have now received the file of Yolles Rotenberg, one of the competing contractors, and I intend to get the files of others as well. So that these exhibit books will be meaningful to you in the course of the hearing in that way.

I should tell you also that I have asked for each party who is willing and interested to provide to me an outline, if you like, of the evidence available through personnel within those entities. Now, in the case of Hydro, these have been provided to me unconditionally. In the case of Canada Square, I have been asked to receive ~~this~~ assistance; and I might say at the outset that this sort of response is done on a completely voluntary basis. Normally, if I were interviewing witnesses then the witness would simply say to me: "You'll hear what I've got to say when I get in the witness box." And it is not required of a witness to forewarn me or instruct me in advance, through counsel or otherwise, what evidence he is going to give. Now, in the case of Canada Square, I have had resumes provided to me, but it is on the understanding that these are only skeleton outlines. There may be statements in evidence inconsistent with what is in the outline and I will then ask you then for

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E.H.

B-27-1

(Mr. Shibley)

purposes of confronting witnesses and I am not ^{to} release these
anyone, including members of the committee.

I think that is fair game in terms of the fact,
as I say, that there is no obligation in providing to me, they
are done to expedite my task of investigation. And I would
the committee now to give reassurance to, not only Canada Square
but to anyone who volunteers statements to me, that they will be
employed only for informational purposes to me. I might say
what they do for me is permit me to relate through others' evidence
and as I suspected right along, the fact outline is an outline
facts that are easily proven otherwise than by the statement
itself. But it certainly has expedited my research.

So those are the ground rules, so to speak, again,
before we get under way; and unless the committee have any
observations on what I have just said, I intend today to go ahead
and call Mr. Gathercole, the Chairman of Ontario Hydro, as the
first witness.

Mr. Chairman: Mr. Gathercole, if you would come
forward, sir. If you would cozy up to that microphone; but
before you sit down we decided, the committee has decided, that
all of our witnesses are going to be under oath.

²³
GEORGE E. GATHERCOLE, sworn.

Mr. Chairman: Now then, Mr. Gathercole, if you
would be seated, and for the sake of Hansard and posterity, if
you would get that microphone perhaps a little bit closer to you
or at least speak loudly so ^{it} we can pick up your reverberations.

Mr. Gathercole: Thank you, Mr. Chairman.

Mr. Shibley: I will advise members of the court

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(Mr. Shibley)

that through counsel for Hydro a request has been made to permit Mr. Gathercole to make an opening statement outlining the history of ~~this~~ transaction and the provision of Hydro viz-a-viz various elements of the matter. ~~I have indicated on your behalf~~

(Tape H-28 follows)

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E.M.

(Mr. Shibley)

H-28-1

the ~~history~~ history of this transaction and the position of Hydro ^{vis-} ~~various~~ elements of the matter. I have indicated on your ^{been} ~~been~~ that I saw no reason why he ought not to do this, I have ^{provi} ~~provi~~ today with a copy of that statement and I think it would be ve useful in terms of very quickly establishing the position of Ontario Hydro referable to the issues and, if I may say so, a background against which ensuing evidence can be assessed and compared and also give you some instinct for the development of the evidence not only of this but other witnesses as well.

Before I ask - well, first I would like your concurrence that he would be permitted to make this statement.

Agreed.

Mr. Shibley: And I think in fairness, I have said to Mr. Genest that it is always unfair to any witness to ask him to tell about himself so I asked Mr. Genest to provide to me a curriculum vitae of Mr. Gathercole, and I intend to take him ^{because} ~~because~~ through some of this history, ~~as~~ I think it is important this committee understands the background of most of the witnesses who are to be called before it.

Mr. Gathercole, I would like you to tell the committee something about yourself first. I understand you were born in Hamilton, is that correct?

Mr. Gathercole: Yes, it is.

Mr. Shibley: And what schooling did you undertake?

Mr. Gathercole: Well, I took the normal schooling and went to work for two years and then attended McMaster University. Following ~~that~~ that, I attended for a time the London School of Economics playing ice hockey in London, England, and then I attended the University of Toronto.

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Mr. Gathercole: Yes, I have.

Mr. Gathercole: Yes, I do.

Mr. Gathercole; Yes, they are.

Mr. Gathercole: Well, I have had a career in the Province of Ontario, primarily as an economist, with the government of Ontario over 17½ years and I went down as first Vice-Chairman of Ontario Hydro ^{on} December 1, 1961, and I became Chairman of Ontario Hydro April 1, 1966, so I have been Chairman for seven years and Vice-Chairman for 11½ years. So if you add it all together it represents something in the order of 28 years in the public service.

Mr. Gathercole: Yes, and just the last day or two of 1944 and 1945 and I may say that I am perhaps one of the few individuals who date back to Mitchell Hepburn, because prior to the war - I am sort of an antique in a sense - Ken Taylor, who at that time was dean of arts and professor of economics at McMaster University had been appointed ~~to be~~ ^{to be} ~~the~~ ^{to be} ~~an~~ ^{to be} ~~advisor~~ ^{to be} of the government of Ontario on the Dominion-Provincial Relations Commission which at that time was under Chief Justice Rowell. And he asked me, since I had just come back from London, England at that time, whether I could do it, and I did - which of I could assist him.

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(Mr. Gathercole)

That was the only time I had met Premier Mitchell Hepburn, when he appeared on the scene on the day that they made the submission which was in the ~~Leg~~ Legislative Chamber, to the royal commission which was under Chief Justice Rowell. I started in there, that was a long story, but I am apt to get carried away in telling about these things, that I did serve for a time under George Drew and Tom Kennedy and Leslie Frost, primarily over a long period of time under Leslie Frost. At the time Premier Robarts came in, I moved down to Hydro and I don't mean that with any disrespect because I carried on for a time as well under John Robarts.

Mr. Shibley: What was your function while you were thusly employed by the provincial government?

Mr. Gathercole: Well, I was primarily engaged in the development and formulation of economic policies on a wide variety of matters, working on budget speeches and budgets. Jim Allan knows a lot about this because I worked for him as well. And I was engaged on quite a wide variety of very exciting developments, many of which have formed part of the ~~the~~ social and economic fabric of this province and they are on the statutes of ~~the~~ today. I refer to the Ontario Hospital Insurance, Ontario Portable Pensions Act, I think they call it the Pension Benefits Act, the first unconditional grants which were made to municipalities were developed out of the organization which ~~developed. I suppose~~ ~~to be~~ the first economist in the Government of Ontario or practising economist, ~~and~~ ~~economic~~ formed the first ~~department~~ in the province.

Mr. Shibley: I understand you obtained status of deputy minister of economics. Is that correct?

Mr. Gathercole: Yes, I started out as assistant

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E.M.

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(Mr. Gathercole)

provincial ~~xxxxx~~ statistician but then I then I ^{became} working basically as an economist, at least had been graduated as such. I never thought I was, but nevertheless I was graduated as such and I ultimately developed into what they called the office of the provincial economist, provincial economist and deputy minister of Economics, and Deputy Minister of Economics, Intergovernmental Affairs and then Deputy Minister of Economics and Development.

Mr. Shibley: And also the status of Deputy Minister of Economics and Development?

Mr. Gathercole: ^{Yes.} That was an amalgamation of economics and I think it ^{was called} ~~involved~~ development, *and industry.*

Mr. Shibley: And I understand also that you are a director of the Atomic Energy Commission of Canada?

Mr. Gathercole: Yes, I am.

Mr. Shibley: And the Canadian Nuclear Association? Is that correct?

Mr. Gathercole: ^{Yes} Past-president.

Mr. Shibley: And you are now a member of the Board of Governors of McMaster University? Is that correct?

Mr. Gathercole: That is correct. This was a non-paying job. ~~However~~ As a matter of fact, it cost me money.

Mr. Shibley: Is there anything else you want to tell the committee about yourself and your history?

Mr. Gathercole: No, I don't think so. How do I address you, sir, counsellor, Mr. Shibley or ---

Mr. Chairman: Mr. Shibley I think is probably the easiest.

Mr. Gathercole: All right.

Mr. Shibley: Mr. Gathercole, the committee has already indicated its willingness to accept of your making

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M.H.

H-27-5

(Mr. Sutbley)

your opening statement and we might proceed with that, *please*

Mr. Gathercole: Well, thank you. Mr. Chairman and gentlemen, I have been Chairman of the Ontario Hydro ~~for~~ the last seven years. Many years ago when I worked for Ontario Hydro as an economic executive assistant, I formed a very high respect for the organization and I believe it to be today one of the most effective institutions of its kind ^{in the world} ~~in the~~ ^{in the} ~~ecology~~ of the world. But today it stands before your committee overshadowed by a cloud of suspicion which I believe to be ~~utterly~~ completely unjustified and which I am confident the investigation of this committee will show to be completely and utterly unjust.

I am grateful for the opportunity ~~which~~ you have given me to come and be able to make an integrated statement setting out the course of these events. In this statement, I propose to review in broad outline the salient facts as I know them relating to the contract between Canada Square and Ontario Hydro. ^{There are} ~~Other~~ members of the Hydro management ~~on~~ team whom, I believe, without exception, to be men of integrity, ability and dedication, ^{and they} ~~will~~ provide the committee with details in the special fields of competence.

At the outset, let me affirm to this committee my unshaken conviction in the truth of three propositions which I believe are basic to this investigation:

First, that the only factor which ~~has~~ influenced the decision of Hydro to enter into a contract with Canada Square for the construction of its head office was the best interests of Hydro and the power users and people of Ontario;

Second, that there was no politically motivated or whatsoever to influence Hydro to confer any favour upon any company or person;

(Mr. Macpherson)

~~ScotiaBank attempt - what would be the influence of Hydro on the construction of the
up on the ground company or person;~~

Third, that in the best judgement of Hydro, the terms of the contract are financially and economically sound for Hydro.

I should like, Mr. Chairman, if I might, and members, to outline the headings under which I propose to review the conduct of Hydro and the involvement of the office of the Chairman in the contract in question. These headings are as follows:

I am going to deal first with the background; then the decision to proceed with the construction of a new head office; and how did we get to know Canada Square; our discussions with other developers and our final negotiations with Canada Square; why we decided that we should scrap or mainly scrap the 1960 ~~architectural~~ plans; and what are the benefits of this contract to Hydro.

Let me begin with the background: For a full understanding of the circumstances surrounding this contract, the committee must go back some seven ~~year~~ ^{centrally} or eight years ^{to} 1966. At that time, detailed studies were made of the need for a new head office building and the appropriateness of its location; that is, down diagonally from the Parliament Buildings here. These studies were completed early in 1968, at which time the commission engaged Gordon J. Adamson and Associates, and Chope and Moffat to prepare plans for a new head office. Based on the studies made, the architects recommended a two-stage building and plans for the first stage were substantially completed by the latter part of 1969. In the normal course Hydro would have proceeded to call for tenders from a prequalified group of contractors with financing to be provided from the ^{sale of Ontario} programmed Hydro bonds guaranteed by the province.

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(Mr. Gath photo)

However, by that time economic conditions had significantly changed, and there was considerable debate and discussion about this in the Legislature. The economy had reached an overheated condition, employment was at a high level, particularly in the construction trades, and interest rates had ~~increased~~ reached an all-time high level. In January the province paid bond interest, and this seems to be incredible in retrospect, ~~it~~ paid an interest rate on an issue of bonds ^{of} ~~at~~ \$100 million at ³ 9-1/4 per cent; as a matter of fact, the yield was 9-3/8 per cent, which is the highest in history. These conditions raised a serious question in the minds of our organization and our ~~Commissioners~~ ^{prudently} ~~as to whether we should~~ proceed with the calling of tenders at that time. I apprised the then Premier of the province, or Prime Minister as he was then called, that our plans were complete and that we were ready to proceed but that we had some misgivings about the high interest rates and the high level of construction activity. The Premier asked us to consider deferring construction and pointed out that the province had taken action in delaying the ~~construction~~ construction of some of its building projects. I am not sure, but I believe these were the Howat and Hearst blocks, which for a time had been interrupted and later on were recommenced. In the light of ^{Premier} our assessment of the situation and the advice of the ~~Premier~~ that day and the discussion ~~made~~ in the Legislature ~~with~~ ~~that~~ about the fiscal nightmares, ^{which} ~~was~~ was one phrase that was used, the commission decided not to proceed with construction at that time. The architects ~~had~~ ~~at~~ our chief architect and the plans which they had ~~drawn~~ ~~at~~ a cost of about \$1.5 million, or \$1 million ~~at~~ were temporarily shelved.

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H.N.

H-29-;

(Mr. Gathercole)

Now, ~~there was a decision~~^I came down to the decision to construct the head office. ~~The decision to defer the~~^I construction of ~~the~~^{the} head office building in 1970, ~~wasn't~~^{wasn't} a decision to abandon it at all, but to defer it and postpone ^{it} for perhaps a year; to see if conditions would be appropriate at that time. But that decision meant that the problems of Hydro with reference to the scattering of its head office staff continued and, indeed, ^{grew} were intensified. Our staff ~~was~~^{grew} more than had been previously anticipated when the ~~actual~~^{data were} ~~was~~^{given} to the architects, Adamson and Shore and Moffat; that suggestion ^{projection} ~~was~~^{exceeded} by the fact that we were getting more deeply involved in the thermal programme, and particularly the nuclear side; as designers and engineers increased and the accommodation for them had to be increased. So Hydro was obliged to rent considerably more space, and it entered into negotiations with the Fairview Building at 77 Bloor Street West and rented 270,000 square feet. Well, this ^{raised} ~~was~~ a question in the Legislature when the Hon. George Kerr made the announcement, ~~and~~ⁱⁿ Mr. MacDonald replying to Mr. Kerr, said this ~~was~~ on June 3, 1970:

"If you are going to be putting out, to use the Hydro case as an illustration, \$20 million in rent over the next ten years, I think it is plain common sense to go ahead and build your own building".

And we thought so, too. After that, ^{however,} ~~we~~^{we} had to rent ~~some~~^{more} space. Today 60 per cent of the total space requirements of Hydro is rented in outside buildings at a ~~total~~^{total} rental cost of ~~one million per year~~^{one million per year} and ~~an anticipated~~^{an anticipated} ~~increase~~^{increase} ~~of one million per year~~^{of one million per year} ~~in the next ten years~~^{in the next ten years}.

11-29-41

in the future. Now, aside from these mounting rental payments which were getting very substantial, the spread of staff over five scattered rental locations had several other disadvantages. Now, there have been some references that we have eight locations. Three of them are: our present building, the engineering building behind it and another building over on Orde Street, which ~~is~~ ^{is now} I believe ^a computer centre. So there were five rental properties ^{eight} scattered buildings, ^s but three of them ^{were} in a cluster, and would continue to be at least that number in that area. But there are disadvantages aside from the mounting rental payments, which didn't give us any asset in the long run. There was lack of co-ordination of staff, time spent in ^{transportation} ~~transportation~~ between ^{the} buildings, ^{cost} of operating a bus system moving people backward and forwards, lower productivity, the waste inherent in paying rents particularly during a period of inflation. Every year you wait you pay more in the end to realise the building.

When we added to these problems the inflation which was going on in building costs and our then projected rates of expansion, we became persuaded that it was in the power users' interest that a head office building be proceeded with as soon as possible.

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3.35-3.45 p.m.
E.M.

H-7-5

(Mr. Gathercole)

they are Hydro bonds with a government guarantee. Now these
are
figures what they are this year; in the future they will increase
~~very considerably~~ ^{and} substantially ^{and} perhaps in the latter 1920s
represent borrowing something in the order of a billion dollars a
year. I think we have to ~~consider~~ ^{consider} that the economy will be
much expanded at that time ^{and that} there is no question that these
things are manageable, ^{but} nevertheless they are very heavy burdens.
And in view of these heavy prospective borrowings and on the
recommendation of our financial advisers, including those in
the Treasury Department of the province, we sought to ~~as~~ avoid
the use of our conventional ⁱⁿ borrowing sources for the financing
of our office facilities and we decided to explore the lease-
purchase method.

Now how did we get to know Canada Square? If we
were to go the lease-purchase way, which had indicated it had
some very definite attraction ⁱⁿ relieving the burden on the con-
ventional sources of borrowing, ~~it meant that discussions should~~
~~be held with individual developers who could undertake the~~

(Tape H-20 follows)

(Mr. Gathercole)

it meant that discussions about developers who could undertake design, but certainly the cost of the housekeeping of the building with lease-purchases. The work together with our chief architect began to carry out a series of studies. Mr. Henry Sissons, the Commissioner of Services, a member of the group, was also involved with the work of Victoria University, that is the University in the course of his work for that institution of arrangements which the Ontario Education, that is OISE; and perhaps I should call it that for brevity; ^{had} made a ~~series of~~ ^{series of} arrangements for construction of their building. He was also told that OISE was extremely satisfied with the arrangements they had made. As a result, Mr. Candy and Mr. Witbeck, the commission's manager of office facilities, visited OISE in June of 1971, was June 8 of 1971, and were given further particular arrangement which OISE had made with the Canada Mr. Candy, on the instructions of Mr. Sissons, the exploratory discussions with Mr. May of OISE.

These discussions were put into the on going made by our organization into the system alternatives us. I was not involved in these discussions, although from Mr. Candy, from Mr. Sissons and so on, I did get a and I think Mr. Candy ^{has} advised me that I visited the building on July - I think it was July 14 of 1971. I had a talk with Mr. Brooks, who was the ~~chief architect~~ ^{chief architect} of the building. I also talked with Mr. May, and I was

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(Mr. Galloway)

~~It meant that discussions should be held with individual developers who could undertake the role of ^{the} money, and ^{perhaps} the design, but certainly the construction and management, and also the housekeeping of the building, ~~and~~ ^{we} had no experience with lease-purchases. The members of our senior management, together with our chief architects and financial analysts, began to carry out a series of studies into these matters. Mr. Henry Sissons, the Commission's Assistant General Manager of Services, a member of the group conducting the studies, was also involved with the work of a building committee of Victoria University, that is the University of Toronto, and in the course of his work for that institution was made aware of arrangements which the Ontario Institute for Studies in Education, that is OISE, ^{the} and perhaps I could refer ^{to} it as that although it is a name I don't particularly like, but I would call it that for brevity; ^{had} it made a lease-purchase arrangement ~~for the construction of their offices. He~~ for construction of their offices. He was also told that OISE was extremely satisfied with the arrangements they had made. As a result, Mr. Sissons, Mr. Candy and Mr. Witbeck, the commission's manager of buildings and office facilities, visited OISE in June of 1971, I believe it was June 8 of 1971, and were given further particulars of the arrangement which OISE had made with the Canada Square Corporation. Mr. ~~the~~ Candy, on the instructions of Mr. Sissons, then undertook exploratory discussions with Mr. Keen of Canada Square.~~

These discussions were part of the on-going study being made by our organization into the various alternatives open to us. I was not involved in these discussions, although hearing from Mr. Candy, from Mr. Sissons and so on, I did pay a visit, and I think Mr. Candy ^{has} ~~the~~ advised me that I visited the OISE building in July - I think it was July 11 of 1971 and had a talk with Mr. Keen, who was in charge of the urban studies there. I also had a talk with Mr. Keen on the subject of the urban studies.

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3.45 to 4.00 pm
DT

(Mr. Gathercole)

had had references to OISE before from a variety of sources in the province. My own daughter, who was familiar with some people who worked there, spoke very highly about the facilities there; but I paid a visit there on July 11 and met Mr. Brooks at that time; and I must say that I was quite impressed with it. However, all the discussions on these matters were carried on by Mr. Candy, Mr. Sissons and Mr. Witbeck.

In August of 1971, a set of plans for the building designed in 1969 was sent to Canada Square at their request. Although I was not aware of this at the time, or indeed until a couple of weeks ago, Mr. Candy will tell you that the purpose in this was to assess certain tentative conclusions that the members of our staff, Mr. Witbeck and others, Mr. Candy, had reached on the possibilities of the buildings and revisions to it.

Now the discussion with other developers. When it became known that we were reviewing our plans for a new head office, several contractors, developers and realtors approached us and expressed an interest in participating in the project. Over the course of time, exploratory discussions were held with Canada Square, Ellis-Don Limited, Y & R Properties, Horizon Developments and Cadillac Development. During this time we had reached no decision on how the building would be financed, although a lease-purchase agreement, with the developer providing the money, began to look increasingly feasible and, from the standpoint of relieving the burden on our conventional sources of borrowing, attractive.

In the late 1971 and early 1972, our chief architect asked a group of developers, a representative group, to submit proposals in meeting our requirements. These were Canada Square, Ellis-Don, Y & R, Horizon and Cadillac.

All of them have since, except Cadillac, which had indicated, I am sure, that it was willing to participate in the

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2.45 to 4.00 pm

PP

(Mr. Gathercole)

development over on, I think it was Bloor Street, made submissions which were received by Mr. Candy during the end of January and early February of 1972. Through the next four months these proposals were analysed^S by our staff and recommendations for selection were given to the commission in July of 1972.

The next heading I want to discuss is under our final negotiations with Canada Square. The submissions made by the various contractors who had been invited to make submissions, were carefully examined by the senior members of our Hydro organization. It was their considered opinion that the proposals made by Canada Square were superior to those made by the other developers. At a meeting of the commission held on July 19, 1972, five months after the receipt of the proposals, the commission approved the entering into a contract with Canada Square, but subject to the negotiation of other conditions which, if they were not accepted, would have meant that we would have turned to other proposals and other bidders. The commission authorized the retaining of Mr. James McCallum, an acknowledged expert in the field of real estate development, to assist it. Intensive negotiations through July, August, September and October led to the execution of the documents.

I come then to the question of why did we scrap the 1969 plans. By the fall of 1971, senior ~~members of~~ ~~members of~~ our staff had reached the tentative conclusion that plans which had been prepared in 1969 no longer met the new set of circumstances which faced us. Nearly three years had passed between the start of the preparation of these plans and the reviving of the studies, and the need for many changes had become apparent; some of them because of the delay in us getting ahead with this building.

For instance, our ~~data~~ Data Processing and Computer Department, which was to be located in the new building, and

(Mr. Thompson)

the great powers are bent on it. For the... of the... This is entirely consistent with... as a business enterprise. This flexibility has contributed - to... this - much to the great reputation of that Ontario... figure has earned around the world. And it has a fine and quiet reputation around the world.

The contrast with Canada House is exceedingly serious. We are dealing with so many imponderables, one of which, of course, ~~will~~ will there be a rise in construction costs over the next two or three years. And again unions were asking for - like today - 11 per cent increases. We don't know what construction costs are going to be. So I think, gentlemen, and I hope you will have that in mind, there are many imponderables in this that we do not know. But these and other matters in the agreement which lay legal and other consultations will be brought forward by our architect, by our legal people, and by Mr. Witbeck and Mr. Rogers and certainly by Mr. Gordon, our General Manager, as well.

I have full confidence in the honesty, integrity and competence of every Hydro employee who is engaged in this project ~~is~~ involved in it. I have not complete confidence in the

As you will appreciate, the chairman and the members of Ontario Hydro must rely upon the advice and experience of their staff decisions. Even if we were inclined to examine or control of Hydro's activities - which we are not, and cannot do. I am always struck by that the light of day we come to see every night although I don't have anything to do with it. That is the type of structure we have in Hydro. There is a great delegation of this responsibility and the authority is delegated and the decision-making comes up from the bottom.

I believe in the integrity and the competence of the staff. I am always struck by that the light of day we come to see every night although I don't have anything to do with it. That is the type of structure we have in Hydro. There is a great delegation of this responsibility and the authority is delegated and the decision-making comes up from the bottom.

May 27/73
4.30-4.20 p.m.
E.H.

H-32-1

(Mr. Gathercole)

~~Mr. Gathercole is our assistant general manager~~
~~for finance, and has had an important role. He is a relatively~~
~~recent appointment in this position, going back to something of~~
~~a year. He has had very extensive experience in Hydro, 24 years~~
~~served in a variety of branches. He has been a planning~~
~~engineer, a methods analyst, manager of the systems department~~
~~and he has been director of property, manager of budget and~~
~~financial reporting, comptroller, financial comptroller and~~
~~director of computing services. He is also a graduate of~~
~~the University of British Columbia in arts and electrical~~
~~engineering.~~

Ken Candy is the commission architect, upon whom a lot of responsibility has been placed in this. He has held this post for 21 years. Since that time he has been responsible for the architectural design of all the Hydro buildings and structures, from the smallest office area to buildings of our largest power stations, and these have been done in a very excellent fashion. They are not lavish, but they are enduring and they are very clean. To my mind, Ken Candy has turned out to be a very superb architect. In the last 10 years alone he had the responsibility of recommending to the commission some like over \$100 million in contracts, that is for these buildings and so on. He received an award of honour from the American Power Association for the Arrow project in British Columbia, where he had acted as an architectural consultant to British Columbia Hydro.

During the H.L. Lawrence power project, Mr. Candy not only saw to it that the design of new power facilities

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E.E.

H-32-2

(Mr. Gathercole)

that is building structures for them, but also was directly involved in the massive relocation programme which saw some 6,500 people moved to new communities, particularly in Ingleside and Long Sault. I think this is where my first association was with Ken Candy. I was receiving some letters about ~~the~~ fixing up sewers and waterworks and so on down in some of these communities along the St. Lawrence and Ken was the individual who ~~went~~ went down to try and provide some accommodation for those with grievances.

Now, Ken Candy has worked for Hydro for ²⁷~~34~~ years. Before that, he served in the Canadian army engineers; he spent 10 years in private business, including two years in England where he attended the Bartlett School of Architecture at the University of London. He became a registered architect in 1946. He is a member of the Royal Architectural Institute of Canada and the Ontario Association of Architects. He is a conscientious dedicated and hard-working member of our staff, and such is his pride in Hydro that he adopted as his own daughter's initials, HEPC. So it is an indication of, here is a fellow who is really dedicated.

I would urge the members of this committee - I am coming to the end of my remarks, Mr. Chairman, I am sorry I have been so long, but I thought it would be appropriate to set out the way we feel about it - I would urge the members of this committee to reach their conclusions about our judgements and procedures on the basis of the ~~the~~ testimony. Reputations are involved. The responsibility of this committee, as I know you realise, is heavy. The confidence of the public in Ontario Hydro is the heart, the very heart of this matter. If these

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E.M.

H-32-3

(Mr. Gathercole)

are left unanswered, if suspicions remain, it will cause irreparable harm to a great organization which has served the people of this ~~great~~ province honestly, efficiently and well. And I would say if ~~those suspicions do remain~~, those suspicions do remain, it would make it very difficult for these people, for myself in particular, to carry on in Ontario Hydro, because with the problems that inevitably affect any large utility today, they must ~~have~~ ^{have it's head} some person in whom there is confidence.

Gentlemen, I have been 28 years in the public service, ^{I have} a big investment of time and energy in that career. I have been associated with the ~~initiation~~ and formulation of a great many programmes, a large number of important programmes that stand today as part of our social and economic framework; and I mention among that the Ontario Hospital, unconditional grants, Portable Pensions Act and many other things, including a variety of fiscal arrangements going back over many years. In that time I have not ^{looked} ~~any~~ for financial gains for myself or financial gains for ~~any~~ anyone else; and I am not talking about one year, this contract, I am talking about 28 years. I have not for financial gain for myself, or financial gain for anyone else, supported the award of any contract, or exercised any other influence on the course of any action, other than I genuinely believed it to be in the best interest of the power users or the people of Ontario.

Thank you very much.

Mr. Chairman: Thank you, Mr. Gathercole. Are you ready to go on with some cross-examination?

Mr. Gathercole: Sure.

Mr. Chairman: I shouldn't call it cross-examination but some examination by Mr. Shibley; or do you want a little more

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Mr. Gathercole: Oh, I would be happy to proceed.

Mr. Chairman: All right. There is a glass of water for you, you are getting a little dry.

Mr. Gathercole: A little gravelly.

Mr. Chairman: Very good.

Mr. Shibley: That is not a good circumstance for the Chairman of the Hydro Power Commission.

Mr. Gathercole, I want to establish as a matter of record, certain arrangements, if you like, referable to the production of documents in the possession of Hydro to me as counsel to this committee. Have you given instructions to people who in any way had anything to do with this transaction to elicit from their respective files all documents which in any way relate to the issues to be determined by this committee to have those documents produced to me as committee counsel?

Mr. Gathercole: Mr. Chairman, I have presented the documents that I have. I haven't personally, but all documents relating to this have been collected by my executive assistant and secretary, and have been handed over to Mr. Durand who has assembled all those documents, which, as far as I am aware, have been made available.

Mr. Shibley: Who is Mr. Durand?

Mr. Gathercole: All the documents have been made available.

Mr. Shibley: What function does he fulfil with Hydro? What is his position?

Mr. Gathercole: Mr. Durand is director of public relations, which covers a very wide range of activities.

Mr. Shibley: All right. Was instruction issued from you to Mr. Sissons, Mr. Gordon, Mr. Candy, Mr. Lean, Mr.

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H-32-5

(Mr. Shibley)

Cameron, and all other persons who in any way participate in the formulation of the agreement with which we are concerned, to produce from their files any documents referable to the issues before this committee?

Mr. Gathercole: Mr. Counsellor, Mr. Shibley, as far as I am aware, all these documents, correspondence, have been collected and have been made available.

Mr. Shibley: I am concerned that your instruction has issued to them to do this?

Mr. Gathercole: That is correct. Mr. Durand assure me that that is the case.

Mr. Shibley: All right, thank you very much.

Mr. Renwick: Mr. Chairman, may I interrupt? Would Mr. Gathercole please answer Mr. Shibley's question? Did Mr. Gathercole himself, as Chairman of the Hydro, did you issue instructions to your general manager, to be disseminated throughout the Ontario Hydro organization, that all of the documents and all of the correspondence was to be made available to this committee? And were those instructions given in writing?

Mr. Gathercole: The instructions were not given in writing, Mr. Renwick. They were, however, given and it was understood. The message to us came by telephone; I communicated that telephone message to the general manager and to others who were involved; and therefore this message, as far as I am aware, has been translated into action.

Mr. Renwick: Mr. Chairman, perhaps we could ask that Mr. Gathercole, the Chairman of the commission, give written instructions to the general manager, ~~to be~~ to be disseminated throughout the organization, to make certain that we do in fact.

(Mr. Renwick)

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E.M.

have an orderly way of ascertaining that we have the documents and the correspondence and all inter-office memoranda available to the committee.

Mr. Chairman: I think it is a reasonable request.

You will see no reason for not doing that, Mr. Gathercole?

~~Mr. Gathercole: Not at all. I have no objection to the committee having all the documents and correspondence and all inter-office memoranda available to them. I have already done so, and I have no objection to the committee having all the documents and correspondence and all inter-office memoranda available to them.~~

(Tape H-33 follows)

May 21, 1973
4:50 - 4:55 pm
JLL

(Unintelligible)
(Unintelligible)

~~I think this is a reasonable request, for you to request for me to ask that Mr. Gathercole~~

Mr. Gathercole: None whatsoever. As a matter of fact I thought ~~it~~

Mr. Chairman: You have already done it verbally. I think ~~the~~ Mr. Renwick is suggesting it might be wise to have those instructions from you, as chairman, in writing.

Mr. Shibley: I am sure it's an oversight, Mr. Gathercole but included among the documents that I am seeking are the personal diaries of each of these gentlemen for the years 1969 through to 1973 inclusive. Could you arrange that? And I am including your own personal diary - I mean your business diary, yes. Thank you very much.

I have asked your staff to prepare for me an organization chart.

Mr. Bullbrook: Mr. Shibley, before you go on, ~~there~~ I don't want to and I'm sure Mr. Renwick didn't feel obliged to unduly to interrupt you, - but there is something that crosses my mind that I want to have clarified now if I might. During the course of Mr. Gathercole's statement, he said that all technical and legal assistance would be made available to us ^{for} interpretations. ~~Am~~ Am I to understand by that that we are going to have information from those lawyers who were involved in the drafting of the agreement? And I would like to know whether the Hydro considers any of their materials privileged material?

Mr. Shibley: The solicitor who assisted in the making of the agreement on Hydro's behalf, as well as the solicitor who acted on behalf of Canada Square, are on my list of proposed witnesses. Whether or not they claim a privilege ^{or} I understand that Mr. McCallum is not claiming any privilege. I have yet to speak to Mr. Bradshaw who was the solicitor acting on the transactions for Canada Square.

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4:20 - 4:30 PM
JLP

(Mr. Shibley)

They are included among the people whom I have listed as witnesses.

Mr. Bullbrook: May I say, Mr. Chairman, for the public's sake, that I don't infer anything in asking that question. I truly wanted to know whether that information would be available to us.

Mr. Shibley: I believe one reason that Hydro has retained Mr. Genest is because Mr. McCallum expects to give evidence.

Now, with respect to the Hydro organization and because it is a fairly involved one in terms of personnel, Mr. Gathercole, I asked your people to compile an organization chart which my assistant will produce for you now so that it might be exhibited. And I would like you to identify for members of the committee those people on that chart that had to ~~do~~ do with the making of this agreement.

Mr. Gathercole: I would like to introduce the General Manager—

Mr. Chairman: You will have to speak into the microphone - I am sorry, Mr. Gathercole.

Mr. Gathercole: I would introduce the General Manager Mr. Douglas J. Gordon. And Mr. Sissons, the Asst. General Manager of Services; Mr. ~~WITBECK~~ ^{WITBECK}, the building manager; Mr. Ken Candy ^{DURAND} ~~DURAND~~, the Commission Architect; Mr. ~~WITBECK~~ ^{WITBECK} I have already introduced; Mr. Arthur Evans, 1st Vice-Chairman; Mr. ~~Bill~~ ^{Bill} Raney who is legal counsel; oh Mr. ~~NASTICH~~ ^{NASTICH} here, ~~Assistant~~ ^{Assistant} General Manager of Finance; Mr. Dennis Dack and Mr. PETER Maitland who is also associated with us but are not included in this chart.

Mr. Shibley: Thank you. Perhaps we can have that made Exhibit 1 to the proceedings.

Mr. Chairman: That chart appears to you to be accurate, Mr. Gathercole?

Mr. Gathercole: Yes, fine.

Mr. Chairman: I will enter it then as Exhibit "A".

Counsel tells me we have got more exhibits than there are letters in the alphabet, so I'll change that to Exhibit 1.

May 22, 1973
4.30 - 4.40 p.m.
H.R.

(~~CONFIDENTIAL~~)

Mr. Laidlaw: It certainly does. May I suggest that you distribute two ^{copies for the} ~~copies for the~~ three of us?

Mr. Shibley: Yes, I'll do that.

I might say, Mr. Laidlaw, I presume that Hydro has copies of its own doctrines?

Mr. Laidlaw: Well, I think so, Mr. Shibley.

Mr. Shibley: It was to you that I intended the 12th copy to go.

Mr. Laidlaw: Well, I am very grateful to you. There is no question but what we can find it. It's just a question of ~~finding it~~ keeping this thing rolling.

Mr. Shibley: I thought that was understood.

Mr. Laidlaw: Well, thank you very much.

Mr. Shibley: Now returning to the document, Mr Gathercole; I just wanted it introduced so as to establish it. I gather from it that there was some communication, referable to your new building, ^{with} ~~with~~ Mr. Davis as early as May, 1969? Is that correct?

Mr. Gathercole: There was this ~~xxxxxx~~ reference to whether we could provide accommodation space in the proposed Hydro building for the Department of Education. We responded that there wasn't space available.

Mr. Shibley: Now, then, I gather also that it was in the summer of that ^{year} ~~month~~ that you were being confronted with the economic circumstances to which you have referred, which were threatening a deferral of the construction of that building?

Mr. Gathercole: Yes.

Mr. Shibley: And I'd like produced to you ~~see~~ memorandum, directed to you from Mr. Sissons, dated August 15 1969, referable to that subject.

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4.30 - 4.40 p.m.
M.R.

Mr. Chairman: We are going to have to get a pair of skates for Mr. Bell, I think.

Mr. Shibley: First of all, can you identify the memorandum for purposes of the record, please?

Mr. Gathercole: Yes, I am able to identify it, yes.

Mr. Shibley: And can you confirm that it is a memo to you from Mr. Sissons?

Mr. Gathercole: Yes, I would confirm that it was a memo to me from Mr. Sissons.

Mr. Chairman: That, Mr. Shibley, I think is number four. Is that right?

Mr. Shibley: Yes.

I would like to read to you, Mr. Gathercole, from Page 2 of that memorandum and paragraph 3, the following:
" It seems apparent that if we are not to proceed with this ~~building~~ ^{building} at this time, because of apprehension about financing and construction costs, it would have to be on the basis that we were going to get out of the business of operating our own head office facilities and seek to have them built commercially, with a much higher cost to our long-term operation in terms of financing and return on investments. There are, of course, sacrifices in owner satisfaction in the loss of direct control of the construction and operation of such a facility.

" And many questions would be raised in the minds of both staff and public by ^a public organization, which had always owned and operated its own facilities, placing this in the hands of others at higher interest cost^s."

Mr. It's a change in wording. It had been typed "higher ~~run~~ financing cost per profit" and it's reworded "at higher interest costs". Do you see that?

Mr. Gathercole: Yes, I do.

Mr. Shibley: Now, I'd like you to explain to the committee what was taking place on or about August 15, 1969, to give rise to that sort of commentary on the part of Mr. Sissons.

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4.30 - 4.40 p.m.
H.R.

Mr. Gathercole: I don't know whether I can speak for Mr. Sissons, and interpret his thoughts correctly. I would say that during this period of time, because of a number of discussions that we had had, our whole organization, particularly with the Treasurer, on our capital expending and on our borrowing requirements, that the thought was emerging - you know, if we are going ahead with the construction of our building, then maybe we shouldn't be putting this extra load on the traditional or conventional sources of borrowing and this message was percolating back. This arose from consideration by our own treasury people but also the treasury people of the government with whom we are coordinating our borrowing activities.

Mr. Shibley: What I am concerned about, Mr. Gathercole is this - Mr. Sissons is talking to you in terms of higher cost to a long-term operation, in terms of financing and return on investment. What does he mean by that?

Mr. Gathercole: Well, he may mean this.

Mr. Shibley: What did you take him to mean by it?

Mr. Gathercole: All right. What I took him to mean by that is that we were borrowing the money directly ourselves; in all likelihood we ought to be able to borrow it cheaper than some other ~~development~~ ^{developer} or some other organization with a government guarantee. But that isn't the question. The question is whether, in the light of our very heavy borrowings, ~~whether~~ we should be beginning to diversify and giving consideration to other means by which we can finance the big programme that we have ahead.

In other words, we were, at this time, considering - the treasurer particularly was considering - other types of funding arrangements and a number of these methods were in the process of being explored. Now, whether they go back to 1969, I don't know in a position to say.

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4.30 - 4.40 p.m.
J.F.

(Mr. Gathercole)

But all I'm saying is this was the thrust of our activity at that time. Concern over the rise in our capital requirements, arising primarily because of our development of the nuclear programme, which is more capital expense than that of conventional - that is to say, coal or fossil-fired ~~thermal~~ ^{thermal} stations.

Mr. Shibley: You notice that Mr. ~~Shibley~~ ^{Sissons} also makes reference to, and I'm quoting him, "sacrifices in owner satisfaction in the loss of direct control of the construction and operation of such a facility".

Do you consider that there are sacrifices, things that are given up by Hydro on that type of arrangement?

Mr. Gathercole: Well, I would say if there weren't any ~~maximum~~ restraints, if there were no restraints on borrowing, our own self-imposed restraints, then ~~the~~ ^{the} course I would prefer would be by direct borrowing. But I'm very conscious of the limits on our borrowing or of using other sources for those capital funds.

Now, this also raises the question of whether we can maintain the building; whether we can maintain the building and provide housekeeping services ^{as} economically as ~~max~~ ^{as} someone else. ~~and~~ ^{the} the general conclusion is, in our circles ^(Mr. Sissons and) and I think ^{Mr. Gordon} would verify this, ~~is~~ that we are not able to match the cost of someone else, because of our union ^{rates} ~~costs~~ in maintaining ~~the~~ ^{this} maintenance and assuming responsibility for these maintenance ^(and) housekeeping services. I'm not an expert in this field. I'm just giving you the crystallization of thinking that has emerged out of quite a number of discussions.

~~Mr. Goleby~~ Mr. Goleby: Well, Mr. Gathercole, ~~as do I gather~~ ^{from your answer that}

H-35 - 1

~~(Mr. Gathercole)~~

~~...giving you, you know, the day-to-day utilization of thinking,
and as it emerged after quite a number of discussions~~

Mr. Shibley: Well, Mr. Gathercole, do I gather from your answer that, leaving the question of maintenance aside, ~~if~~ if financing was not a question confronting Ontario Hydro, ~~was~~ you would prefer to ~~expand~~ build and own your own building?

Mr. Gathercole: Definitely.

Mr. Shibley: Thank you. Now, then,

Mr. Gathercole: But I have to mention, I have to qualify that, by saying that we have gained increasing evidence that having the housekeeping maintenance done by outsiders is more economical than we can do it.

Mr. Shibley: I realize that.

Mr. Deans: Well, ~~because~~ it is more economical because it's done much more cheaply; and it's done ~~and~~ more cheaply because they don't pay decent rates. We had that argument last week with the Minister of Public Works.

Mr. Shibley: ~~Now~~ Mr. Gathercole, ~~are~~ still taking it back to 1969; as at December 17, 1969, were the working ~~draw~~ and documents ~~complete and ready for tenders?~~

Mr. Gathercole: That is the general information I have. I never saw the plans. I don't know; I have to qualify that; I have ~~never~~ never seen the plans and I don't know whether they were complete. I think the statement is that they were generally completed by that time. But as to whether they were and at what date, I have no knowledge whatsoever.

Mr. Shibley: I am ~~now~~ producing to you a further memorandum dated December 17, 1969, over the signature of Mr. Card ~~directed~~ directed to yourself. Do you recognize that document, please?

Mr. Gathercole: Yes, I recognize the document.

May 22/73
8.40 - 8.49 a.m.
R.M.S.

H-35 - 2

Mr. Shibley^e: You'll notice it starts out,

"All working ~~drawings~~ drawings and documents
(for the construction of)
~~the~~ the above building will be completed by December 15
subsequent to which about one month ~~will~~ will be
required for final checking."

Then it goes on,

"We are now in a position, however, to advertise for
~~a~~ ^a ~~pro~~ qualification which would take approximately
two weeks."

And the letter carries on with certain data as to
your existing premises, and then it ends up in the last
paragraph on page two,

"I realize that the current economic situation
makes it very difficult to arrive at a decision
at this time, but I would appreciate very much ^(an indication) of
how we should proceed in order that ^I ~~we~~ may advise
the consultants accordingly as soon as possible."
Does that refresh your memory, Mr. Gathercole?

Mr. Gathercole: Well, I am generally aware of
the memorandum.

Mr. Shibley^e: Yes; and are the circumstances outlined
in that memorandum ~~and~~ accurate to the best of your
knowledge and information?

Mr. Gathercole: Mr. Candy said that that those
were the circumstances, I am prepared to take his word for ~~that~~

Mr. Shibley^e: All right. Now, then, ...

Mr. Genef^e: Are you going to mark this, Mr. Shibley?

Mr. Shibley^e: Yes, please.

Mr. Chairman: That becomes exhibit five, I believe.

Mr. Shibley^e: The next exhibit I want produced is
an excerpt from ~~the~~ minutes of the meeting of the Commission
held on January 7, 1970. ~~and~~ While that is being distributed,
I'll read it to you, Mr. Gathercole.

It appears to be the second entry in the minutes.
The only one of the subject of that ...

May 22/73
4.40 - 4.50 p.
R.E.S.

H-35 - 3

(Mr. Shibby^e_K)

"The Chairman reported that he had discussed the proposed new head office building with the Prime Minister, and that Mr. Roberts had advised the Commission to defer the start of its construction for a year, at which time it was likely that a decision could be reached. In this connection, the Prime Minister stated that the ~~provinces~~ province was also holding back on some of its construction projects."

Now, then, did you have such a conversation with Premier Roberts at that time?

Mr. Gathercole: Yes, I did.

Mr. Shibby^e_K: ~~Can~~ Can you give the members of this committee the circumstances of that exchange with the then Premier?

Mr. Gathercole: Well, Mr. Chairman, and ~~Mr~~ Counsellor that goes back a three-year period. It was in connection ~~with~~ some ~~of~~ other meeting that I raised the question with him as to what his reaction would be. I ~~had~~ ^{had} traced in some ~~of~~ of the circumstances that existed at that time, the state of the economy, interest ~~rates~~ rates, and so on, I asked him his reaction, and he suggested that the province itself had deferred some of ~~its~~ ^(its) works because of the high-level ~~of~~ ^{of} construction activity and, therefore, indicated that ~~we~~ we ought to consider it without, however, undermining our authority to do so.

Mr. Shibby^e_K: Now, notwithstanding the decision to defer, I'll put it to you that construction ~~was~~

Mr. Bullbrook: Excuse me, Mr. Shibby^e_K, have you distributed those minutes yet? Is it to ~~be~~

Mr. Shibby^e_K: I am sorry. I'll tell you the circumstances. That item was in the second ~~issue~~ of two volumes of documents. Having asked Mr. Gend ~~a~~ ^{late} last night to start the reproduction of ~~the~~ a dozen copies, it was not among the ~~documents~~ ^{documents} ~~that~~ ^{that} were to be sent to the committee.

H-35 - 4

(Mr. Shibley)

your copy of that. But I have read to you the whole of the document.

Mr. Bullbrook: I didn't know whether I was without one.

Mr. Shibley: No., that's the difficulty. It's a logistical one only, and, hopefully, we'll not have too many like that, ~~so~~ I felt that I had to bring that in somewhat out of ~~the~~ order in which it was presented to me.

Returning to you, Mr. Gathercole; notwithstanding the decision to defer, I put it to you that you were nevertheless continuing your intention to build a building as designed for you, at that time, to be owned and financed by you, that that was your then intention?

Mr. Gathercole: Yes, that is so. It's sort of ~~in a state of~~ ^{in a state of} ~~flux~~, you know; there have been certain observations made as to ~~whether~~, which route we should take in the financing of the building, ~~and~~ Certainly at that time, as I mentioned in my ~~opening~~ opening remarks, ~~then~~ had we been proceeding, we would have called for tenders in the normal way. But conditions were not, seemingly, appropriate for it; the Prime Minister of that day had indicated they had deferred construction. Now the position Hydro was in ^{is} in the light of those conditions, should it proceed in conflict with the provincial ~~policy~~ policy? ~~and~~ We took the position that, with these conditions being what they are, we shouldn't, ~~and~~ there are other references to the decision; and some people did indicate that this was ^{or} very wise decision for Hydro to take, and praised Hydro for having taken that decision.

Mr. Shibley: Mr. Gathercole, I gather that the decision to defer the construction of a building, which was then already fully planned and "specified", was a decision predicated on the then economics of the time and made in conjunction with the ~~then~~ then politicians of the time. Is that correct?

H-35 - 5

Mr. Gathercole: Yes, I would say that was true.

Mr. Shibly^(e): And, in fact, did you not give instructions that the final touches, so to speak, respecting the drawings and plans, should be completed by the architects who were then on retainer by Hydro?

Mr. Gathercole: My recollection is that ~~h~~ that was so.

Mr. Shibly^e: Yes. ~~h~~ ^{I am} having produced to you a letter dated January 9, 1970, directed to Gordon S. Adamson and Associates, from Mr. Candy, with a copy directed to your attention and to the attention of Mr. Sissons. Did you receive your copy of that letter?

Mr. Gathercole: Well, I; yes, I am sure I did.

Mr. Shibly^(e): And in that letter Mr. Candy states:

"This letter is to advise you that, due to the present economic and political situation, it is not going to be possible for us to proceed with the ^{construction of the} new head office administration building at the present time, and it appears at the moment that this deferment will be for a minimum ~~of~~ of one year."

And ^{he} ~~we~~ say it is regrettable, then go on in a

(Tape h H-36 - 1 follows)

May 22/73
4.50 to 4.55 pm
BT

(Mr. Shibley)

~~Mr. Shibley: I would suggest, however, that you complete your drawings to the point where they are ready to go out for tender so that we do not leave any unfinished area which might have had to be completed at a later date as this always leads to confusion."~~ ^{Chairman} Now, that was Mr. Candy's letter to Mr. Adamson. Was that in accord with the decision of the Hydro commission at that time?

Mr. Gathercole: Yes, I would say it was. Now as to the wording of the letter, the precise wording, that's Mr. Candy's wording. *It isn't mine.*

Mr. Shibley: I realize that.

Mr. Gathercole: Yes, right.

Mr. Shibley: But it accords with the decision — making that was taking place at the commission level, *does it not?*

Mr. Gathercole: Yes, that is right.

Mr. Chairman: Mark that as Exhibit 7, Mr. Shibley.

Mr. Shibley: Yes.

Mr. Bullbrook: How does it become seven as a matter of interest? Are you making the minutes *an exhibit?*

Mr. Chairman: I was making the minutes number six, if that was your intention. I understood it was, even though we haven't got copies of them, but we do have one to mark as an exhibit.

An hon. member: Thank you.

Mr. Shibley: I might tell the members of the committee a similar letter was written to Shore and Moffat and Partners, but I am not going to tender that as an exhibit. Mr. Gathercole, did you during the spring of 1970 order and approve of an original of minutes Fox Associates referable to operations of the station and telephone control?

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4.50 to 5.00 pm
PP

Mr. Gathercole: I believe we did, yes.

Mr. Shibley: I am producing to you the report compiled by that firm, ~~and~~ It is styled Ontario Hydro Head Office Administration Building, Escalation Investigation for the period July 4, 1968, to February 1, 1970. Is that the report that emanated from that firm on your instructions?

Mr. Gathercole: It was something that was required, I believe - one of the procedures that was being employed at that time. It was something that Mr. Zaza Candy had been authorized by the commission to do and which he was doing.

Mr. Shibley: Yes. Will you make that the next exhibit, please?

Mr. Chairman: Number eight.

Mr. Gathercole: This is my understanding; that's all.

Mr. Shibley: Now, I note on page 10 of that report, Mr. Gathercole - I am sorry, it is on page 7 of the report, conclusions are set out and in the overall it is a summary conclusion as follows: "From the preceding data and calculations, we feel that the total expected project escalation from the period July 4, 1968, to February 1, 1970, is 10.04 per cent. for architectural, structural, plumbing and electrical trades." Is that correct?

Mr. Gathercole: I am just trying to, counsellor, identify *what the page is.*

Mr. Shibley: I am looking at page 7. You will notice under the date at the top of the page, ~~and~~.

Mr. Bullbrook: It is the ~~and~~.

Mr. Gathercole: Right, I see it, yes. I beg your pardon. Mr. Chairman, I am not familiar with this.

Mr. Shibley: You haven't seen this exhibit?

Mr. Gathercole: No. Well, I haven't gone into the detail of it. I may have seen the outside cover, but I haven't done anything about it and I haven't read it. - I haven't read it before and so I am not able to comment.

May 22/74

4.00 to 5.00 hrs
PT

(Mr. Shibley)

exhibits, I must apologize, but counsel for Hydro and I are doing our best logistically, ~~and~~ when they are not produced to members of this committee, they will be reproduced by the day following for inclusion in your exhibit books. The next document I want to produce to you, Mr. Gathercole, ~~there~~ is a letter from Mr. Candy to the Fairview Corporation Limited, dated October 16, 1970. A copy again went to yourself as well as to Mr. Sissons and Mr. Farmer. Do you remember receiving a copy of this correspondence?

Mr. Gathercole: No, I don't remember receiving a copy of it. I haven't any comment to make on it. ~~But~~

Mr. Shibley: Perhaps I should also, ~~and~~

Mr. Gathercole: If it is in my files, I have received it but there are a number of copies of things that do come to my office which I wouldn't make any ~~xxx~~ mental note of or would have any recollection of having read it or seen it.

Mr. Shibley: All right. Well, we will leave that then for the moment. ~~The letter is in my files~~

Mr. Chairman: We won't ^{put} ~~it~~ it in as an exhibit now.
 ^{It} ~~It~~ may not have been properly identified.

Mr. Shibley: Right. Thank you. The letter to which that document was a response was a letter from the Fairview Corporation, dated October 5, 1970, to Mr. Candy. ~~That document~~ I will prove this through Mr. Candy when he is called. ^{Part} of that letter says: "There are numerous different leasing arrangements, some involving Hydro ownership of the land and some involv^{ing} Fairview ownership of the land, combined with various option arrangements which would provide for the ultimate long-term ownership of the land and building by Hydro." Now, Mr. Gathercole, this is a communication as early as October 5, 1970, and I want to ask you clearly, at your level, level of the chairman and the commission itself, can you there ever have been

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(Mr. Shibley)

consideration being given to a possible lease-purchase transaction?

Mr. Gathercole: I would say that there was, Mr. Counsellor and Mr. Chairman, in the early days. You know, we were considering a variety of measures. We hadn't reached any conclusions. ~~There was a possibility of a lease-purchase arrangement, but it was not considered at that time.~~

(H-37 to follow)

May 22, 1973
5.00 - 5.10 p.m.
M.R.

(Mr. Gathercole)

~~_____~~ We were completely feeling our way in this area. It's been suggested that we look at ~~these~~ lease-back arrangements, lease-purchase arrangements; but as to the exact input of that thought, of that idea, I'm just not able to speak with any great accuracy. When did we begin to think that way? If there is some documentation, I would say yes, that would be the time; but I'm not able to go back and reconstruct and say that ^{it} was about that time that we were beginning to feel, in the light of our heavy financial commitments for our generation and ^{transmission} facilities, that we ought to be looking to how we could broaden our methods of raising funds, and the instruments for doing that that would be ~~employed~~ employed.

But it was in that period of time, very definitely, ~~that~~ And it was being suggested to us that the province was itself, on its own, ~~being~~ undertaking some of these measures.

~~And then in the period of time~~

Mr. Shibley: Then I should tell you, Mr. Gathercole, there is a dearth of documentary material from that date that I've last given you, October 5th, 1970, to April 22nd, 1971. Is this consistent with your knowledge, information and belief as to the fact that nothing of a ~~any~~ documentary nature was being created within the offices of Hydro referable to this project?

Mr. Gathercole: Mr. Chairman, I hope I didn't give that impression, that nothing was being done, because we knew these studies were being carried out during that period.

Mr. Shibley: My problem, Mr. Gathercole, is this. At the moment I am working to your documents and there is a document dated October 5th, 1970, being a letter from Fairview, and the next document produced to me is a memorandum,

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M.R.

(Mr. Shibley)

dated April 22nd, 1971, which struck me as a relatively prolonged period of time, within which there would be no documentary evidence referable to this project.

Mr. Gathercole: I have no information on it.

I just can't speak on that. I have no recollection of it whatsoever.

Mr. Shibley: Well, will you, in the course of giving your instructions to members of your staff, ask them to particularly make examination into areas such as that, which seem to be devoid of any documentary productions on their part. There may be an explanation for it. There may just have been nothing happening; but as I say, I'd like it sort of double checked, if you would.

Now then, in this - I'd like produced to you - I don't know, there is no indication that you received a copy of this, but I'd like it produced to you in any event, a memorandum from Mr. Sissons to Mr. Gordon dated April 22nd, 1971.

Have you every seen a copy of that memorandum?

Mr. Gathercole: I don't recall it.

Mr. Shibley: You don't recall it? Well, let's deal then, with its content only for the moment. You notice — and Mr. Chairman I will be proving this formally through Mr. Sissons and Mr. Gordon —

Mr. Chairman: All right. I am not marking it as an exhibit.

Mr. Shibley: No. Not at this time.

You will notice it mentions, in paragraph 2: "Unless we can be sure that a new building owned by the commission will be committed within the next year, we must get into negotiations with some developer for a major, new, rented (all electric) — that's a "rented facility (all electric) presumably in the Hlong-Fitay area. On the present market, developers are not committing buildings without major tenants.

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M.R.

(Mr. Shibley)

Such negotiation would include absorption of other ~~new~~ ^{interim} leases necessary to bridge the gap. This would leave us, in years to come, in five separate buildings.

"Before either of these steps are taken we should reconfirm whether or not the best long-term course for the commission is still to develop one large central head office in this location. My own view is that the factors earlier pointing in this direction have not changed, but I think it is essential that we have a strong consensus on this without going so far as to make a great research of it or putting it out to popular vote. And any established" - he suggests the establishment of a task force comprised of Whitbeck as chairman, with Campbell, Hillary, Nastich, Gomer, Allen and Candy as members.

Now then, Mr. Gathercole, first of all, was such a task force established with your approval?

Mr. Gathercole: It wouldn't require to have my approval, or the commission's approval, to establish that task force. ~~They~~

Mr. Shibley: I see.

Mr. Gathercole: They would proceed to set it up. Now whether it was a task force, ~~it was~~ ^{it was} a group, in any event, of people who began to study the ramifications of how we might best meet the problem of providing additional accommodation.

Mr. Shibley: You mentioned in your opening statement, I notice, that it was Mr. Sissons who had, so to speak, overriding direction over this project. Is that correct?

Mr. Gathercole: Yes. Under the general manager, that is true, that he did have; and it was delegated to him because this is his primary responsibility, to provide space to meet the requirements of the various divisions in our organization.

Mr. Shibley: Yes, of course. Then it would be within the realm of his jurisdiction to establish this task force? Is that what you are telling me?

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M.R.

Mr. Gathercole: Oh yes.

Mr. Shibley: And I note also that it is Mr. Sissons who makes reference to the fact that we must get into negotiation with some developer for a major new rented facility, presumably in the Bloor-Bay area."

Mr. Gathercole: Well, I think that lead - I don't know ; I think it lead to the renting of the Fairview. I'm not sure about that, but it depends on the sequence of things. But it —

Mr. Shibley: Now in any event —

Mr. Gathercole: In any event, there is no doubt that we had to get more space and that ~~was~~ the idea was to do that. On the other hand, he's saying this, that we ought to be proceeding to a development on the site which could be integrated with that of our operations, the engineering building and the other facility, which is now occupied by our data processing centre.

Mr. Shibley: ~~Was~~ Had Mr. Sissons mentioned to you, during the spring of 1971, the fact that he had had discussions with Mr. Brooks, who was responsible for the OISE building?

Mr. Gathercole: Yes, I was advised that they had ~~not~~ - not of this ; I was only advised after they ~~had made the~~ had made the ~~visit to~~ visit to Canada Square.

Mr. Shibley: That was somewhat later, was it not?

Mr. Gathercole: Yes. I didn't know anything about the earlier part, no.

Mr. Shibley: Do you have any ~~on~~ information in that respect at this time?

Mr. Gathercole: No.

Mr. Shibley: So now we have a task force set up within your organization, in the spring of 1971, to consider the needs of Hydro respecting a head office. Is that correct?

Mr. Gathercole: Yes. A group.

Mr. Shibley: Were you then disseminating any information referable to your needs to potential developers?

Mr. Shibley: Yes, I did.

... of the development of the first...
Good deal... plans prepared, and that the...
 ... had been signed... No there was a...
 ... at this. ... any formal or informal...
 ... people, ... are going to start. ...
 ... didn't know.

Mr. Shibley: Was the word to speak on the street...
 Hyde was looking for a developer?

Mr. Gathercole: Not to my knowledge.

Mr. Shibley: I'm having produced to you a letter dated
 June 2, 1971, on the letterhead of Telco Realty Limited, directed
 to the commission; and there is a stamp marked "Received in the
 office of the chairman". Do you recognize that letter, please?

Mr. Gathercole: Yes, I recognize it.

Mr. Shibley: May we have that made the next exhibit?

Mr. Chairman: That will be No. 8, now then.

Mr. Shibley: The letter, you will note, reads in part
 "We have a party who would consider developing
 your head office according to your plans and
 specifications on a long-term lease. We are
 aware that this is a huge undertaking."

... I put it to you, Mr. Gathercole, that you, in turn, referred
 letter to Mr. Conroy for his attention. Is that correct?

Mr. Gathercole: Not to my knowledge.

Mr. Shibley: Did you refer it to Mr. Stinson?

Mr. Gathercole: That's right. Yes.

Mr. Lullbrock: Excuse me, Mr. Shibley, what was the
 of that letter?

Mr. Shibley: The letter is dated June 2, 1971.

... information did you put upon the letter in the
 of the type of development which was in mind?

Mr. Gathercole: ... I didn't put any
 ... § ...
 ...

Mr. Lawrence: 1901-2-11-12.

And then, in 1978, the 100th anniversary of the

100-100000

(Mr. Shibley)

But I did not agree to this and I told him that we would like to know more about where we are dealing with before we released any drawings or gave out anything more than general information.

Mr. Gathercole, was that the policy of Hydro responsible to the disclosure of its plans as at June 15, 1943?

Mr. Gathercole: Well, I think Mr. Candy was, in address a letter to this correspondent, taking into consideration the individual or the company involved. Obviously, he is exercising some discretion in this matter.

Mr. Shibley: Yes, I understand.

Mr. Gathercole: He is writing a value judgement. He says in the letter, Mr. Coursey he has never attempted a project of this size in the past but has connections with a large development project in Europe, which he would not name, ~~which~~ he says was among the three largest in Europe. His role, therefore, apparently, is a middleman to bring the developer and the client together, for which I assure he would receive some kind of finder's fee. Now I would like to say this. We have countless approaches which are made by people who have some source of funds in Europe. Our treasury department has explored countless numbers of these with result. ~~When~~ When it comes down to getting the money, it usually turns out that the interest rate is either sky high or the money is not there. So we track down many of these approaches that are made by ~~by~~ people who want to be helpful or people who think they can make a little speculative money by being agents and agents for funds. Most of these are a waste of time; and I think Mr. Candy is saying something of the same thing. It doesn't represent our overall policy. It is just a ~~little~~

Mr. Shibley: That may have been an unfortunate...
J. L. H. 100-100000
neither
K

Mr. Gatherecole:

Mr. Gatherecole: That is a fair question. I am not sure if I am interpreting you?

Mr. Gatherecole: That is a fair question. I am not sure if I am interpreting you?

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Mr. Gatherecole: That is a fair question. I am not sure if I am interpreting you?

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(Mr. Shibley)

~~On a memo dated June 10, 1971, submitted by Mr. Candy~~
~~and which note that it relates to a meeting on Tuesday,~~
~~June 8, with Mr. Barry Brooks.~~ First of all, have you had
occasion to read this memorandum?

Mr. Gathercole: Well, I have no knowledge of whether
it was in my files or not, but ~~no~~

Mr. Shibley: You mentioned in your opening statement
Mr. Gathercole, the fact that your people did visit with Mr.
Barry Brooks, ~~was~~

Mr. Gathercole: Yes, that's right.

Mr. Shibley: ~~and~~ and elicited information from him.
Is that correct?

Mr. Gathercole: They reported that to me.

Mr. Shibley: Yes; and this memorandum sets forth
a report on that meeting, does it not?

Mr. Gathercole: Yes, it does.

Mr. Shibley: Yes, perhaps we could then make it
the next exhibit, Mr. Chairman.

Mr. Chairman: That's number 12, I believe.

Mr. Shibley: Yes.

Mr. Bullbrook: Could you identify that for us?

Mr. ~~Shibley~~ Shibley: This is a memorandum, to
the file, dated June 10, 1971, prepared by Mr. Candy, the
commission architect, ~~and~~ I'll read it in part.

"On Tuesday, June 8, accompanied by Mr. H. J. ~~Sisson~~
Sisson; and Mr. J. L. Withack, I visited Mr. Barry Brooks, who
was responsible for the arrangements for the construction of
the OISE building on Bloor Street West, which is an educational
centre. The construction of this centre was started in late
1967; took two and one half years to complete, at a cost of
\$16 million, consisting of approximately 449,000 square feet
of floor area; 12 stories high. The building was built
by the United Church of Canada, Mr. Barry Brooks, on a 10-year
lease from the City of Toronto. The building is now being
used as a day care centre for children of the OISE.

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(Mr. Shibley)

"obtained by the developer ~~xx~~ at eight and one-eighth per cent. The educational centre pays \$5.09 per square foot per year for 30 years, at the end of which time they buy the building for one dollar. The building is maintained and heated, ~~and is~~ ^{etc.} by the developer, with the educational centre paying for the cost of ~~the~~ hydro only. It is a well-built building and is well appointed with considerable broadloom; partially office landscaped; and some partitions which the owner paid for at \$11 per lineal foot."

And, then, skipping some of this data,

"Mr. Brooks was very satisfied with the deal they obtained from Canada ~~the~~ Square and felt ^{that} they had a personal interest in this type of building and did more than they were actually required to do in order to produce a building of a prestige nature that the developer would be proud of.

The square footage and ~~rental~~ ^{rental} rates are as follows:."

And he sets it out:

^{For} office area above ground floor, the rate is \$5.09 per square foot per year",

and other data is set out.

Now, Mr. Gathercole, having regard -- first of all, perhaps you might again identify Mr. Sissons and Mr Witbeck. Just tell us who they are, please; I don't mean to point them out.

Mr. Gathercole: Oh, fine, fine. Mr. Sissons is the assistant general manager of services, ~~and~~ responsible for the obtaining of space and the arranging of office space; Mr. Witbeck is the building manager.

Mr. Shibley: Yes, and, of course, Mr. Candy is the chief commission architect?

Mr. Gathercole: Yes.

May 22/73
5.20 - 5.30 p.m.
R.E.S.

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Mr. Shibley: So these were three of the higher-level personnel, if I may use that expression, within Hydro?
Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And would their collective judgement be significant, respecting decisions ^(later) to be taken by the commission?

Mr. Gathercole: Yes, ^{and} their observations ^{and} recommendations would be very relevant to any decision made. As a matter of fact, the commission decision would be based upon their recommendations, along ^{with} of course, the general manager's.

Mr. Shibley: Yes. Well, then, →

Mr. Chairman: May I interrupt here? ^{Did} you identify that exhibit, Mr. Gathercole? ^{Was} it something that

Mr. Shibley: Yes, he did.

Mr. Chairman: You recognized that?

Mr. Gathercole: Well, I've seen ^{it} ~~two~~

Mr. Chairman: All right, fine, I am sorry.

Mr. Gathercole: Let's put ^{it} with that one. ^(Thank you.) ^{what I would like to}

Mr. Shibley: Now, Mr. Gathercole, ^{and} I am sure

the committee members would like to know, is what led up to that ~~meeting~~ meeting on Tuesday, June 8? I must tell you again that I am without any documentary ^(indication) of what transpired which led up to that meeting. There is no memo or letters in the file.

Mr. Gathercole: Mr. Counsellor, I think you ^(will) have to rely upon Mr. Sissons to provide this information. I did make references to it in my remarks, ~~and~~ It ^{was} stemmed out of a sort of casual meeting between Mr. Sissons and Mr. Brooks at a meeting of people who were interested in university education at Victoria College. Now, that is all I know about it.

Mr. Shibley: Well, Mr. Gathercole, just to make your own position clear before this committee. Are you telling

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(Mr. Shibley)

from Hydro, with Mr. Brooks, on June 8, was arranged without your being informed of the meeting or its purpose?

Mr. Gathercole: Yes, I am ~~said~~ saying that.

Mr. Shibley: And that no member of the commission, to your knowledge or information, had knowledge that this meeting had been arranged?

Mr. Gathercole: AS far as I am aware, ~~and~~ I, frankly, see no reason ~~why~~ why they should have sought any such authority or permission to go and visit this building and to carry ~~on~~ on discussions and to examine ~~it~~ it.

Mr. Shibley: Well, we are interested in your opinion in that respect, but ~~I~~ I just want to ~~xxxxx~~ ^{have, as a} matter of record, that the commission itself and you, as its ~~and xxxxxx~~ ^(announced) chairman, were not / ~~xxxxxx~~ / the fact that this meeting was taking place. Is that correct?

Mr. Gathercole: Yes, ^{to} the best of my recollection,
I was never apprised that this meeting was taking place.

Mr. Shibley: W And when did you ~~be~~ first receive word that such a meeting had taken place?

Mr. Gathertole: Well, I would think that would be
~~through~~ obtaining ~~this~~ ~~copy~~ another I ~~had~~ received
 a copy of this, I have no recollection of it, ~~the~~ Following
 the meeting, I did get a verbal report that they had been
~~there~~ there and they had reviewed or studied the OISE
 office building and ~~had~~ had formed a very favourable impression.
 That was the essence of the message that I received.

Mr. Shibley: ~~that~~ Who gave you that information?

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5:30 - 5:55 p.
JLP

(Mr. Gathercole)

thing is going ahead, well then I don't bother ~~with that~~ *with that*.

Mr. Shibley: I would like to ask you some questions about the information provided by this document, Mr. Gathercole, which I am sure the committee will be interested in.

I will read the letter fairly completely - ~~the letter~~
~~I'm~~ I'm sorry, the memorandum, dated June 14, 1971, prepared by Mr. Candy as Commission Architect, and directed to Mr. Sissons, the new head office administration building.

"I attended a meeting with Mr. Jerry Moog, the President of Canada Square Corporation, in his office at 2200 Yonge Street on Friday, June 11th, at which time we discussed the possibility of having him finance and construct the above building on a leaseback proposition.

"I explained the Commission's position in this situation, the requirements of the building and the status of our drawings and documents to date, and found him very enthusiastic about the proposition.

"Mr. Moog, as well as having the various Consultants and the connections for obtaining finances, also has the necessary construction forces and says that he only goes into one large project at a time in order that he may devote his entire efforts in this direction.

"He did say, however, that he had a 1-1/2 million square foot proposition pending in downtown Toronto; but he did not think it would be proceeding immediately.

"He says that he is going over to Germany next month as an advisor to the Premier of Ontario to arrange further financing for the Province.

"Mr. Moog seems very well informed and I think quite ~~honest~~ sincere.

JUN 22, 1973
5:30 - 5:35 PM
JLR

(Mr. Shibley)

"I told him that the purpose of my visit was to determine whether or not he had any interest in our proposition and I ~~found~~ found that he definitely has.

"I told him that our financial people would want to look into the situation and that I would discuss it with you before any further approach is made to him.

"As it is a distinct possibility that we could obtain this new building without putting out any capital of our own, and at a cost that would not exceed current rental rates, I would suggest that we consider this matter seriously before making any further rental agreements elsewhere for additional office space.

"Mr. Moog always uses Tamblin, Mitchell and Partners Limited for their mechanical work, in whom he has great faith, and fortunately, I had selected the same Consultant for the mechanical design of this particular building. "

Now, going back on that memorandum, Mr. Gathercole, who instructed Mr. Candy to meet with Mr. Terry Moog on Friday, June 11?

(Tape H-41 follows)

May 22, 1973
5.35 - 5.40 p.m.
F.R.

Mr. Gathercole: Frankly all I can say is certainly I didn't. It wasn't my responsibility to and I would think that whether Mr. Sissons did or not is another matter. That I don't know. You would have to - Mr. Sissons might be able to report on that, but it seems to me that Mr. Candy is simply going about his business in his natural way. Why shouldn't he go and explore this problem? He had been - there had been ~~an~~ indication that we wanted to get ~~main~~ moving with our head office and he was doing everything within the realm of possibility to see if he could explore the means by which we could achieve our objective. I can't see anything wrong with that.

Mr. Spibley: Well I'm not certain

Mr. Bullbrook: Counsel, if I might put a question. If I might intervene for a moment here. Counsel is not inferring or explicitly stating that there is anything wrong with it. He is just asking you questions, sir.

Mr. Gathercole: Well I'm just getting the impression, you know, that maybe everything had to be different, because it's only when I say, "Yes, ²³ ~~that~~ you go ahead -"

Mr. Bullbrook: May I say to you - I don't speak for counsel but for myself - I'm interested as to whether policy filters down or bubbles up, ²⁴ and certainly I think the thrust of counsel's questions are that you have practical implications here, practical things being done, and we're interested whether there was a policy decision made by you people who are responsible for policy to support those practical things, ²⁵ and there is no inference in what counsel says in his questions.

Mr. Gathercole: Well I mean counsel are taking - all right, you are speaking on behalf of counsel.

Mr. Bullbrook: No. No, I am speaking on behalf of

May 22, 1973
5.35 - 5.40 p.m.
H.R.

Mr. Chairman: How are you standing all this extension, Mr. Gathercole? We plan to go until six, is that all right with you?

Mr. Gathercole: Yes.

Mr. Shibley: I think that it's been stated fairly correctly and that is my purpose. I want to know at what level these decisions are being taken; how far planning advances before it does hit the level of a commission decision. So that we know what circumstances lead up to the decision-making that culminated in making the agreement which is now an exhibit.

Mr. Gathercole: The commission makes the decision and may at times set out the guidelines, but it is not involved in the detailed approaches that are made in order to bring about the achievement of an objective.

Mr. Shibley: What you are telling the committee, I gather, is that again, let us say with Mr. Sissons' direction, Mr. Candy might make this attendance on Mr. Moog?

It's at that level that this thing takes place?

Mr. Gathercole: Absolutely.

Mr. Shibley: All right. Well then with respect to the exchange with Mr. Moog at that time, and please don't take any inference from my asking this question, it's my job to ask these questions, you'll note that in the memorandum Mr. Candy says that he explained the commission's position in this situation, the requirements of the building, the status of our drawings and documents to date, and so on.

Now would that be within the authority of Mr. Candy to make that kind of information and those documents or the fact of their status known to Mr. Moog?

Mr. Gathercole: Yes, I would think so.

Mr. Shibley: Yes. Then he makes reference in this memorandum to the fact that Mr. Moog, ^{as} that he's referring to - he says that he is going over to Germany next month as an adviser

May 22, 1973
5.35 - 5.40 p.m.
M.R.

(Mr. Shibley)

to the Premier of Ontario to arrange further financing for the province. Now is that a circumstance that was ever relevant in the mind of yourself or any member of the commission - I'm talking about the Ontario Hydro Commission - which influenced your judgement respecting this transaction?

Mr. Gathercole: I would say emphatically no.

I don't even recall it. I don't even recall that statement at all, so that's ^{the} reason that I question whether I had read it, ^{but} I know this, that in my experience there are so ~~so many individuals who claim that they are you-know-going-to~~ things

H-42 to follow

May 22/73
5.40 to 5.45 pm
P2

(Mr. Gathercole)

~~As far as the person that information was given to, which~~
~~whether it was given to him or not, there are so~~
 many individuals ~~that~~ who claim that they are, you know, going to do things on behalf of the Treasury Department, that they have access to this ~~sort~~ source of money, they have that access and they are close to the Premier on this. They are all very great friends with the Premier, yes, when they are talking to us.

Mr. Renwick: (Inaudible.)

Mr. Gathercole: Pardon?

Mr. Renwick: I was just talking to myself.

Mr. Gathercole: But we often find that this isn't so, and so I think ~~that~~ this is a gratuitous comment that was made. Whether it was true or not, I ~~was~~ ^{have} absolutely no knowledge. I have no knowledge about it and I don't attach any importance to it whatsoever. I would say this, if I ~~can~~ might just make an addendum to my remarks, the fact that he had access to sources of money in these other markets would have some significance, because whoever the developer was ultimately, that was going to co-operate or join the partnership with us on this project, would have to have a source of funds.

Mr. Shibley: Was the circumstance that Mr. Moog had gone to Germany as an advisor, ever tabled as a fact, or mentioned as a fact, at any meeting of the commission?

Mr. Gathercole: Not whatsoever.

- was it even

Mr. Shibley: So that ~~wasn't~~ the subject matter of written communication?

Mr. Gathercole: Not to my knowledge, other than this, ~~and this was at a level that~~

Mr. Shibley: ~~And this was at a level that~~ below you, you say?

Mr. Gathercole: I have no recollection of it, no.

Mr. Shibley: I see. All right.

Mr. Pollbrook: Well, shall we make it clear there.

At least, on my very I think it was original to G. E. G.
 As I looking at the correct exhibit

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9.40 to 9.48 am
LT

Mr. Shibley: No, you are looking at the wrong one.

Mr. Bullbrook: I am looking at the wrong exhibit.

Well, will you help me with the exhibit then?

Mr. Shibley: *OK, exhibit number is 13.*
~~It is exhibit 13, being~~

an exhibit dated June 14, 1971, a memorandum from Mr. Candy.

Mr. Deans: We don't have it here.

Mr. Chairman: I think you are looking at exhibit number 11. They are both memorandums from Candy to Sisson, and both dated the 14th of June.

Mr. Bullbrook: I am sorry, Mr. Shibley.

Mr. Shibley: All right. Mr. Gathercole, while we are on the topic, was the circumstance of any relationship between Premier Davis and Mr. Moog over the subject matter of comment either in writing or orally at any meeting of the commission attended by you as it related to this agreement?

Mr. Gathercole: I think on the day that we were recommending the negotiation of the contract, on July 21, ~~it~~ ^{it} may have been one commissioner did raise the point as to whether Mr. Moog was a friend of the Premier's; and that is the only occasion of which I have any knowledge.

Mr. Shibley: There was an earlier meeting in June, was there not, a preliminary meeting?

Mr. Gathercole: Yes.

Mr. Shibley: And the decision on the contract was deferred?

Mr. Gathercole: Yes.

Mr. Shibley: It was not raised at that meeting?

Mr. Gathercole: I have no recollection of it having been raised at that meeting.

Mr. Shibley: You are talking about the July, 1972, meeting at which the final contract was approved?

Mr. Gathercole: Yes.

Mr. Shibley: Any final decision?

Mr. Gathercole: Except for a decision.

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5.40 to 5.45 pm
BP

(Mr. Shibley)

terms with Canada Square.

Mr. Gathercole: That's my recollection.

Mr. Shibley: Now, just dealing with your answer in that connection, you have already stated in your opening statement that in no sense was the decision of Ontario Hydro to enter into this agreement with Canada Square influenced by any circumstance other than what was in the best interests of Hydro and the users of hydro in Ontario.

Mr. Gathercole: That's right.

Mr. Shibley: And again I want you, as a matter of record, to ~~indicate to the~~

~~indicate to the~~

~~indicate to the~~

(H-43 to follow)

(Mr. Shibley).

~~to indicate~~ to indicate in this case the nature of the circumstance of the relationship, whatever it is, between Mr. McLean and Mr. Gatherecole, their entrance into the deliberations or consideration of the matter of the agreement as far as your knowledge and information of ~~the~~ these men.

Mr. Gatherecole: It never entered into our consideration of the agreement, except at the ~~occasion~~ ^{occasion} to which I have already made reference, when it was suggested by, I think, one of the commissioners that ~~that it was a friend of the Premier~~ if he were a friend of the Premier, then this might be embarrassing. ~~That~~ That is the only occasion that it ever entered into consideration, as far as I am aware.

Mr. Shibley: Well, embarrassing in what sense?

Mr. Gatherecole: Embarrassing in the sense that there might be some criticism of it, ~~that~~ ^{but} entering into an arrangement with Canada Square, if it turned out to be that way, friendship between Mr. McLean and the Premier. He took the position, and certainly I took the position, that if that was a matter which shouldn't interfere with the consummation of the agreement.

Mr. Shibley: Would you please identify the member of the commission who raised the topic?

Mr. Gatherecole: I'm not exactly sure right now as to which one it was. I thought it was Mr. ~~Seigneur~~ ^{Seigneur}, but I am not just sure of it.

Mr. Shibley: All right.

Mr. Gatherecole: That's my recollection.

Mr. Shibley: I've just asked, after this meeting with Mr. McLean, Mr. Gatherecole and the Premier, did you, and I say you, or the commission itself, authorize the revision to Mr. McLean of the statement of the commission referred to your local office and on that basis as prepared in 1907?

Mr. Gatherecole: I don't know. I don't know any better.

Mr. Shibley: I am asking you, did you, or the commission, authorize the revision to Mr. McLean of the statement of the commission referred to your local office and on that basis as prepared in 1907?

Mr. Gatherecole: I don't know. I don't know any better.

Mr. Callender: I am not sure that I am not a bit of a cynic, but I don't think ~~anyone~~ that plans were delivered, or that any way were made available to *them*.

Mr. Callender: I am not sure that I am not a bit of a cynic, but I don't think ~~anyone~~ that plans were delivered, or that any way were made available to *them*.

Mr. Shibley: Well, by information, Mr. Callender, is that on August 12, 1971, one print of each of the following drawings for your original building were provided to Mr. [redacted]. *we* They included the architectural drawings, the electrical drawings, the mechanical drawings, structural drawings, and plumbing drawings. Now ~~was~~ your that accord with your own information in that respect?

Mr. Callender: I am so advised, yes, now that that was so.

Mr. Shibley: But you are telling the committee that this was done at Mr. Conley's level of authority and without prior authorization by the committee, is it?

(P-114) Follows

(Mr. Shibley)

~~CONFIDENTIAL - SECURITY MATTER~~

Mr. Gathercole: There is no reason for the commission to authorize. Mr. Candy ~~was~~ had full authority to proceed in that way, with any development, if he thought it was prudent and advisable, and confirmed with the standards of the day.

(Tape inaudible - electronic interference)

It's obvious that he had full responsibility, he was entitled to have that responsibility. He was doing exactly what he should be doing, so long as he didn't violate any relationship with the architect who prepared the plans.

(Tape inaudible - electronic interference - 64 seconds)

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E.M.

(Mr. Gathercole):

I would say he is fully authorized, he was using, in a sense, Canada Square as a model for exploring the direction in which we would go, ~~as~~ a model that had been established by the province itself. It was one that was handy, of which we had some knowledge; and so, therefore, Mr. Candy was ~~going~~ presumably carrying on just exactly what he should do, to gather information where it would be most ~~was~~ accessible.

Mr. Shibley: Now, Mr. Gathercole, you mentioned the term, "model," and I think the committee would be interested in understanding what you mean by that.

Mr. Gathercole: Well, it was a practical, realistic pattern of a developed, ~~and~~ carrying forward of the construction, and design and maintenance and housekeeping, of a building; ~~and~~ it was the sort of thing that Hydro might see as a desirable pattern if it moved into this field; but it was exploring it, at this stage it was exploratory, and it is not anything more than that. But, we were going to a source where there was information, and that is what Mr. Candy was doing. In my judgement ~~he~~ he was doing his job. He was not ~~giving~~ giving any promises to anyone.

Mr. Shibley: Now, let's carry that forward a little bit. I gather that this was the first lease-purchase agreement ever entered into by Hydro. ~~and~~

Mr. Gathercole: We had had no experience with it at all.

Mr. Shibley: You were feeling your way.

Mr. Gathercole: That's right.

Mr. Shibley: And are you telling the committee that what Mr. Candy was, in effect, doing, was testing the water by his exchanges with Canada Square at that time?

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May 22, 1973
5.50-5.55p.m.
D.A.

Mr. Gathercole: That's what I understand, yes.

And that was certainly the general thrust of our programme at that time, ^{it was} what Mr. Candy was doing.

Have I made it clear, there was a pattern ^{available} in what the province had worked out with OISE, and we had no previous experience in this type of an arrangement, and ^{therefor} we went where it seemed to be working out pretty successfully, ~~and~~ Mr. Sissons, Mr. Candy, Mr. Witbeck, and myself ^e later, were very impressed with the facility that came about. I don't know anything about the financial arrangements, but I was certainly impressed that this was a means by which Hydro could achieve ^e its objective of obtaining an office building without putting an extra burden on the sources of capital funds arranged ~~for~~ through the traditional markets.

~~-----~~
~~-----~~
~~-----~~

(Tape H-⁵~~44~~ follows)

May 17, 1971
5:50 - 6:00 pm
JLP

~~(Mr. Gathercole)~~

~~Mr. Candy: I am not familiar with the building.~~

Mr. Shibley: So you were looking at the OISE building as a sample so to speak of what might be available to Hydro for its new building.

Mr. Gathercole: That's right.

Mr. Shibley: And are you saying then it was against that objective, against the background of that objective that these discussions ~~WADA~~ were being conducted as between Mr. Candy and Mr. Hoog?

Mr. Gathercole: Exactly, that is my understanding.

Mr. Shibley: Was there any plan formulated respecting communication with other potential developers at that time?

Mr. Gathercole: I think there were, ~~let me say~~ let me say, letters coming in from other developers. But I think Mr. Candy should respond on this because I am not familiar and I would only be speaking about the stage or the staging of these exploratory studies when I am not familiar with ~~that~~ it, that staging.

Mr. Shibley: Again, I am sure it's of interest to the committee to make an assessment of how far these things are carried forward by your staff before it reaches committee level. I take it that unless and until people at the managerial level, such as Mr. Candy and Mr. Sissons, decided that this was the route to be taken, that it was not going to be tabled for your consideration or the consideration of the Commission.

Mr. Gathercole: That's right. I would say this that during this time, Mr. Gordon will be able to explain as well, there were some discussions in the General Manager's committee, but I am not familiar with those. The General Manager's committee meets usually weekly and discusses a wide range of matters which are affecting the progress in adding capacity to meet our requirements, not only in power plants but in other areas ~~but in other areas~~ as well, transmission line facilities, administration buildings and so on.

May 11, 1971
 10:00 - 10:30 am
 JEP

Mr. Shibley: In other words, this is a role that they play and it is a very crucial one. It reaches us at the decision-making stage. Now, just to finish up for today, Mr. Gathercole, in summary, do I take your evidence to be as follows, that in 1971 you were concerned about the demands upon your capacity to borrow money - item one, is that correct?

Mr. Gathercole: That's right.

Mr. Shibley: You have to say "yes" for the records.

Mr. Gathercole: Yes, ~~it~~^{it} was evolving, I would think, over in 1969, 1970 and 1971. The message was flowing through that we should not, from ~~our own~~^{our own} treasury ~~aiding~~ people - there was also some strong input from the Treasury department of Ontario - that if we could we shouldn't add to the burden of raising funds through additional markets the capital expenditure on the office facility, but husbanding or conserving these capital funds for the working part of our business, and that is generation and transmission facilities, which is what most ~~xxx~~ commercial and business enterprises do, or many do.

Mr. Shibley: All right. And then your next proposition I take to be that with that background you decided to look hard at a lease-purchase type transaction.

Mr. Gathercole: That's ^{right} ~~yes~~, yes.

Mr. Shibley: And that, in respect of looking hard at it you had no experience and were treating the OISE building as a sample.

Mr. Gathercole: Right. That is what I ^{meant by} ~~am~~ saying as a model.

Mr. Shibley: And that the only purpose of the exchange - I shouldn't say only, but the prime purpose of exchanges with Mr. Keog, according to your testimony, during 1971, was to gather information, if you like.

Mr. Cathercole: We went where there was a ready source of information, where there had been experience.

Mr. Shibley: Well, Mr. Chairman, it's two minutes to six and I think it is a convenient time to break off, ¹¹¹ ~~and~~ not to complete with this witness.

Mr. Chairman: I think we are agreed to adjourn. I would remind you that we stand adjourned until 3:00 p.m. tomorrow afternoon. If you will return at that time, Mr. Cathercole, we will be pleased to see you.

LIST OF EXHIBITS

- Exhibit 1. Organizational Chart of Ontario Hydro
2. Copy of Head Office Agreement
3. Letter - May 2, 1969
K.H. Candy to Premier Davis
4. Memo - August 15, 1969
5. Memo - December 17, 1969
6. Minutes of Commission - January 7, 1970
7. Letter - January 9, 1970
K.H. Candy to G.S. Adamson & Associates
8. Report - Hanscomb, Roy & Associates, March 23, 1970
9. Letter - June 2, 1971
from Telco Realty Ltd.
10. Letter - June 3, 1971
Chairman's reply to Telco
11. Memo - June 14, 1971
K.H. Candy to H.J. Sissons
12. Memo - June 10, 1971
K.H. Candy re. Telco
13. Memo - June 14, 1971
K.H. Candy to H.J. Sissons re. Mr. Moog

MASTER COPY

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, May 23, 1973.

H-46-1-H-72-2

J.E. Bullbrook - Sarnia

I. Deans - Wentworth

M. Gaunt - Huron-Bruce

L.C. Henderson - Lambton

R.G. Hodgson - Victoria-Haliburton

W. Hodgson - York North

J.P. MacBeth = (Chairman) - York West

W. Newman - Ontario South

J.A. Renwick - Riverdale

A. McFedries (clerk of the committee)

P. Moore (assistant clerk)

Committee counsel: R.E. Shibley, QC

Ontario Hydro counsel: Pierre Genest

James McCallum

Canada Square Counsel: Douglas Laidlaw

Chairman, Ont.Hydro : George E. Gathercole

SELECT COMMITTEE - HYDRO HEADQUARTERS

H-46-1

May 23/73
3:10 - 3:15 pm.
H.S.

The committee met at 3:10 o'clock, p.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order, and would again ask Mr. Gathercole to come forward. ~~Now~~ I would remind you, Mr. Gathercole, that you were sworn the other day and I'll hand the proceedings over to Mr. Shibley.

Mr. Shibley: Mr. Chairman, before getting under way today, I want to bring to the attention of the committee that, notwithstanding a great deal of effort on the part of counsel for Hydro and the Hydro people themselves, the documentary evidence which has been produced by Hydro has been received by me in segments. I received one block of documents very shortly after I was retained. I received a supplementary volume of documents just prior to the long weekend. And, just today, I have received still further, additional documents. Without wanting anyone to imply anything from that circumstance, because I myself am satisfied that these documents are surfacing, so to speak, after much effort, and it will take time, ~~it~~ is a circumstance I felt my duty to bring to your attention, in that some of the documents will not be received by me now until tonight or this coming weekend, and may be tendered to you somewhat out of the ordinary order that they would otherwise have been presented.

M ~~Now~~ I understand that Mr. Gathercole has issued the written instruction that this committee ordered him to give. And I am presuming that, hopefully, all of the documents will be in my possession not later than at the end of tomorrow, so that I will have the three or four days intervening before we resume

(Mr. Shibley)

next Tuesday, to make a final briefing of the material. I don't mind confessing, it's somewhat disruptive of my own efforts to have supplementary material received at the last moment. On the other hand, it is a sign of the spirit of co-operation afforded by Hydro that Mr. Genest, their counsel, has informed me that they are, in fact, waiving any privilege which might otherwise have attached to the evidence of the solicitor for Hydro, who acted on the transaction, or any internal people within the organization. As I say, I don't want anything inferred from my registering the circumstance as to the production, but I thought the committee should know that this is transpiring.

Mr. Genest: Mr. Chairman, I wonder if ~~it~~ I might assist the committee in this respect. I want ~~to~~ the committee to appreciate that the staff of the Commission has literally been staying up all night for some days now, to try and assemble the material. But the problem is this; ~~there are vast~~ I think the worst thing we could do to this committee is to just say, "Here's 25 filing cabinets and take your pick." Some judgement has to be exercised when these documents are being gone through to see that they are relevant to the purposes of this enquiry. That takes a little time. These documents have to be examined, ~~if~~ then there is doubt, they are submitted to counsel and they are sent on to Mr. Shibley. We are doing the very best; we can and the instructions issued by the Chairman are extremely clear, that everyone is to turn over absolutely everything which could have any possible bearing on the subject matter of this enquiry.

We will try to comply with Mr. Shibley's wishes to have everything in his hands tomorrow, but I can't give ~~that absolute~~ an absolute guarantee of that. ^{undertaking} But we are doing our very best in that regard.

Mr. Chairman: Thank you, Mr. Genest.

May 23/73
3:10 - 3:15 pm.
M.S.

Mr. Shibley: Thank you very much, Mr. Genest. Now, there is one other preliminary matter. Mr. Genest has brought to my attention, Mr. Gathercole, that you wish to correct certain evidence that you gave at this hearing yesterday. And I suggest that the committee give you that opportunity at this time, before we go on.

Mr. Gathercole: Thank you. Well, Mr. Chairman and members, I wish to correct a statement I made yesterday to the effect that I thought Mr. Roger Seguin, a member of the Commission, ~~had~~ at a meeting of the Commission in July of 1972, may have raised the question of Mr. Moog's friendship with Mr. Davis as being a possible source of embarrassment. Since giving my evidence, I have spoken to Mr. Seguin, who has advised me that no such statement was ever made by him and that, in fact, he did not know of any friendship between Mr. Moog and Mr. Davis until he read the press statements to that effect in April of this year.

The Commission minutes show that Mr. Seguin was not present at the meeting to which I referred yesterday. I have also spoken to a number of our other commissioners and our general manager who sits in at all the Commission meetings, and none of them recall any such statement being made ~~at~~ any Commission meeting ~~ever~~ by anyone.

My recollection of the statement I described yesterday is certainly not clear, as I indicated at that time. I accept Mr. Seguin's statement and I wish to advise the committee that my evidence yesterday in that respect must have been mistaken.

Mr. Shibley: Well, Mr. Gathercole, was the mistake ^a referable to the occasion on which comment was made that the relationship would be embarrassing? And if so, was there some other occasion when the ~~an~~ subject matter was raised?

Mr. Gathercole: Mr. Seguin says he never, at any time, made any such statement and that it obviously has come.....

✓

(Mr. Gathercole)

~~... out of my mind as being perhaps a reflection of some of the discussions in the controversy which has ensued in more recent months.~~

Mr. Shibley: I want you to be clear on this, and I want the committee to be clear; are you saying, therefore, that any such comment, from whatever source and whatever was the occasion, was subsequent in point of time to this issue being raised?

Mr. Gathercole: I believe it must have been. To my recollection it must have been. I thought it had occurred during the time that we were discussing it but I am advised that this was definitely not so, and so I can only think that this had some bearing at some time, that it was a suggestion that was made by someone. I don't know who made the suggestion at some later time, and I had related to the two instances together.

Mr. Shibley: Mr. Gathercole, have you any knowledge, or information, as to any such observation or consideration on the part of any member of the Hydro staff prior to the making of the contract?

Mr. Gathercole: No, I haven't.

Mr. Shibley: Right.

Mr. R.G. Hodgson: Prior to the signing of the contract?

Shibley:
Mr. Gathercole: Yes.

Mr. R.G. Hodgson: Or to the making?

Mr. Shibley: Let's talk about prior to the date upon which the commission gave the contract final approval.

Mr. Gathercole: No, I ~~have~~ haven't; no.

Mr. Shibley: Does that satisfy you?

Mr. Renwick: Mr. Chairman, if I may ask Mr. Gathercole, my recollection of yesterday was that when you referred to ~~the~~ this matter of some criticism, or embarrassment, being caused, you were quite indefinite as to who the person was and it was only when you were subsequently asked the specific question that you said that you thought, or believed, it might have been Mr. Seguin. Mr.

Renwick)
 Gathercole, my question to you is that Mr. Seguin, now having stated
 that he didn't make any such statement, are you withdrawing your
 statement that someone, at some point in time, around July, 1972, did
 raise such a question with you?

Mr. Gathercole: That is the essence of what I am
 suggesting. As I had mentioned, the time at which the statement
 was made was very indefinite in my mind when I spoke yesterday.
 At that time Mr. Seguin and various other commissioners have
 made the point that no such discussion took place; therefore, the
 only thing I can conjecture is that it was an impression that I had
 from some of the discussion which occurred sometime later.

Mr. Renwick: Mr. Gathercole, the time reference
 yesterday was specifically in connection with the July, 1972, meeting
 of the commissioners at which the contract was approved with Canada
 Square. The only knowledge that we, as the committee, have with
 respect to anyone raising the question of possible embarrassment,
 or criticism, to the arising in the public mind of the Premier is
 what you told us, ~~and~~ I want to be perfectly clear; are you now
 withdrawing - are you now stating that you know of no occasion,
 either ~~around~~ around the July, 1972, commission meeting time, or
 subsequent to that time, that any question was raised with you by
 anyone about possible embarrassment to the Premier, or possible
 criticism of the Premier?

Mr. Gathercole: I have the impression that somebody
 did raise this point around, or subsequent to, the time of the
 meeting of July 19, but it was just.....

(Tape H48 follows)



(Mr. Gathercole)

~~subsequent to the time of the meeting of July 19th, but~~
~~there was just~~ a vague, general impression or recollection,
 as I stated yesterday, and I did think that at one time that
 it may have been one of the commissioners, but they have
 assured me that this isn't the case; that there was no
 discussion of that nature whatsoever.

Mr. Renwick: Mr. Gathercole, are you saying that
 you were totally mistaken about this impression, or are you
 saying that you now cannot recall who raised the matter with
 you?

Mr. Gathercole: Well, I certainly can't recall who
 raised it, and as I am saying, or endeavouring to do so, that
 it stemmed out of an impression that I had that somebody did
 raise it, but it may be related to some of the discussion, the
 news reports to this effect, which have occurred considerably
 later.

Mr. Renwick: Mr. Gathercole, would you consider that
 you felt that the ~~contract~~ between Ontario Hydro and Canada
 Square would be a matter of embarrassment to, or result in
 public criticism of, the Premier?

Mr. Gathercole: I would say no. I didn't think it
 would be a matter of criticism and I didn't ~~think~~ ^{think} it would be
 a matter of controversy.

Mr. Renwick: Mr. Gathercole, did you reflect on it
 in coming to that conclusion, or did it just not cross your mind?

Mr. Gathercole: I wouldn't say that I meditated on it
 at great length.

Mr. Renwick: But you did give consideration to the
 possible reflection on the Premier, is that correct?

Mr. Gathercole: I think this was later, ^{-later being} beyond the
 meeting when the questions arose in the House, in the
 Legislature.

Mr. Penwick: You are saying that at the time that the contract was approved by Hydro, the Hydro commissioners in July of 1972, this was not a matter that was of any concern to you?

Mr. Gathercole: No, that is right, I am saying that.

Mr. Renwick: Thank you.

Mr. Deans: May I just ask one further question

in that regard? I am sorry - you were quite positive yesterday in dealing with the matter when you said that "we took the position", and then you went on; and certainly I took the position myself that this is a matter which shouldn't interfere with the consummation of the agreement, that matter of the Premier and Mr. Moog being friends.

You ^{said} quite clearly you took the position that it shouldn't interfere. When did you take that position?

Mr. Gathercole: I have taken it ~~quite~~ certainly in recent weeks when there has been some question raised as to whether a contract should be given to someone that the Premier has now acknowledged was in the nature of a friend.

Mr. Deans: I was under the impression - I can understand that - I can't find the spot - oh, I can see it now - when you were asked whether Mr. Moog, whether the circumstances surrounding Mr. Moog having gone to Germany as an advisor was ever tabled or mentioned. In thinking back through that, you can recall quite clearly that that was never ever mentioned at any time, that you weren't aware that Mr. Moog -----

Mr. Gathercole: It very definitely wasn't, no.

Mr. Chairman: Mr. Shibley?


Thank you.

Mr. Shibley: Mr. Gathercole, you mentioned discussing the matter with certain members of the commission and in order to save some time of this committee possibly in terms of not having to call every member of the commission, I would like you to canvass all members of the commission and be ready.

H - 48 - 3

(Mr. Shibley)

hopefully tomorrow, to provide this committee with
information from that source as to whether the recollections
of all members of the committee accord with your own, namely
that there was never any mention



Tape H - 49 follows

H-49-1

(Mr. Shibley)

~~of the friendship between Mr. Moog and Premier Davis nor any related topic raised at any meeting of the commission at which this agreement was under deliberation. Would you undertake to do that?~~

Mr. Gathercole: Yes, I have already spoken ~~to some~~.

Mr. Shibley: You said to some, Have you spoken to them all?

Mr. Gathercole: No, I haven't.

Mr. Shibley: I want to be complete in that respect and I'd like you to canvass them all.

Mr. W. B. Newman: What if they're not in the country? I think some of them are out of the country now.

Mr. Gathercole: Dr. Fleming is in London, England.

Mr. Shibley: Do you know when he's expected back?

Mr. Gathercole: I would think in the course of the next week but I am not sure, He is attending a power conference in England and at the moment.

Mr. Shibley: Well, I will leave that to you to make sure that it's complete.

I want next to return now to the subject of your evidence at the conclusion of yesterday's hearing. You will remember that you advised the committee that the OISE building was adopted as a sample project where government had already been involved with happy results, and that the two dominant factors laying upon Hydro ~~were~~ the circumstance that you felt that ~~they~~ there were some limitations on your ability to finance this building, and further, the circumstance of having someone outside the organization be responsible for maintenance. Is that a fair statement of your evidence of yesterday?

Mr. Gathercole: Yes.

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M.T.

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Mr. Shibley: Now, then, evidence was also tendered to you of the circumstance of attendances on Mr. Barry Lowes ~~at~~ —

Mr. Gathercole: Brooks.

Mr. Shibley: I'm sorry, Brooks, and also that Mr. Candy attended upon Mr. Hoop. Is that correct?

Mr. Gathercole: Mr. Sissons, Mr. Witbeck and Mr. Candy visited Mr. Brooks.

Mr. Shibley: All right, well, now, then, I want to produce to you a memorandum, dated July 16, 1971, prepared by Mr. Cameron, directed to Mr. J. B. Smith with copies to Mr. Dean and Mr. Gus, and first of all, could you identify these gentlemen for the members of the committee?

Mr. Gathercole: Yes, Mr. J. B. Smith is the group manager ~~of~~ integrated financial planning, in the Ontario Hydro organization. Mr. Smith has been on loan to Task Force Hydro in recent months but at that time he was the group manager of integrated financial planning. Mr. Dean —

Mr. Shibley: Just before you leave Mr. Smith, what responsibility would he have referred to this building?

Mr. Gathercole: He was ~~was~~ one of the group managers in the Finance Branch, and since the ~~Finance~~ construction of the building had financial connotations, it was necessary and normal that they would undertake certain ~~and~~ analyses of this work.

Mr. Shibley: Would he be subject to the direction of Mr. Nastich?

Mr. Gathercole: Well, at that time, I believe, he would be subject to the direction of Mr. Harold Banks.

Mr. Shibley: Yes.

Mr. Gathercole: Mr. Nastich's predecessor.

Mr. Shibley: All right, would you carry on? Who is Mr. Cameron?

~~Mr. Gather~~

Mr. Renwick: Mr. Chairman, may I just ask Mr. Gathercole,

oes Mr. S J. B. Smith appear on this chart of reporting relationships?

Mr. Walker: At the bottom of *it*

Mr. Chairman: I'm marking this as exhibit 14.

Mr. ^{Skelly} ~~Gathercole~~: I might say, Mr. Renwick, you continue
on from that chart of reporting relationships...

Tape H-50 follows



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3:39- 3:40 pm

C.B.

(~~Mr. Renwick~~) Mr. Shibley

I might say Mr. Renwick you continue on from that chart of reporting relationships from Mr. Smith on down, ~~to~~ if you look at your first page of the three pages, the smaller of the three, Mr. Smith, I believe, peaks that pyramid of people. So that for continuity, if you look down through Smith you run into a variety of names such as Mr. Cameron, whose report this is, and Mr. Dean, on the upper left side, who is also involved in the financial side. That helps clarify that.

Mr. Walker: No it doesn't.

Mr. Shibley: Part of that exhibit is the small page.

Mr. Renwick: All right.

Mr. Shibley: ~~And~~ the first man in that line up is Mr. Smith, who is the last man on the big sheet, but first man ~~in~~ this division. And you'll notice across the top, on the upper left, is Mr. Dean, who will be giving evidence; ~~and~~ Mr. Cameron, who I also intend to call. If the members are ready then we will proceed. Perhaps you can go ahead, Mr. Gathercole, and tell the members who these other people are ~~not~~ to whom copies of this report were provided, Mr. Dean and Mr. Gush.

Mr. Gathercole: Mr. Counsellor, Mr. Cameron is the financial or economic analyst, and Mr. J.O. Dean, now I'm not sure of the respective positions other than ^{that} ~~Mr.~~ Cameron, is an economic analyst, and Mr. Dean is one of the senior people in the financial part of our division of finance. In other words, Mr. Gush, I'm not familiar with his

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C.B.

(Mr. Gathercole)

position. Mr. Gordon will be able, to I'm sure, to ~~be~~ to explain the various roles that these gentlemen have. But I'm not in that position to make it clear just exactly what their particular roles are in the scope of their work. I am familiar to a degree with that of Mr. Dean, but not ~~in~~ respect to Mr. Cameron or Mr. Gush.

Mr. Shibley: All right. Well, then, if we can go on with what is now exhibit 14, which is in front of you. It starts off "We were asked by John Dean to review the development and financing of this building", and that is the reference to the OISE building, "Exxough Through Canada Square Corporation to determine if there were any implications in the arrangements which could be used to advantage by Ontario Hydro in constructing and financing its proposed new head office."

Now, Mr. Gathercole, do you know how it developed that Mr. Dean became involved and gave these instructions?

Mr. Gathercole: We are carrying out a number of on-going studies in connection with this matter and this would be one of them. This copy I have not seen before. I have seen it since that time, but it isn't the copy which I received.

Mr. Shibley: I understand. What I am interested in knowing, ~~is~~^{is} this is the first time in the material wherein John Dean's name arises. Now I want to know who involved John Dean in an analysis of the OISE building?

Mr. Gathercole: I presume that this was Mr. Banks or Mr. Gordon.

Mr. Shibley: All right. So ~~now~~ then they would

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C.B.

(Mr. Shibley)

get Mr. Dean to start a financial analysis of the OISE building arrangements, and Mr. Dean, in turn, gave instructions, I gather, to Mr. Cameron to make a detailed review. Is that correct?

Mr. Gathercole: I presume that is so.

Mr. Shibley: And this is the product of that review. Is that correct?

Mr. Gathercole: This is an initial effort in a series of analyses which were carried out.

Mr. Shibley: All right, it's an initial effort. Now on page two of this document reference was made to the mortgage terms; Swiss-Granada Holdings negotiated a 30 year, 8-1/8 ~~mm~~ per cent mortgage for \$17 million with Equitable Life Assurance Company, repayable in US funds. The mortgage was secured by the ground leases, the building lease and the building; and then it goes on with the monthly mortgage payment. It sets out terms of the building lease. On page three it provides a comparison of rental rates and, after making an analysis of some detail, I bring your attention to the top of page four, wherein Mr. Cameron makes this observation;

The validity of comparing the OISE space with the variety of space leased by Ontario Hydro is questionable. However, the adjustment of the OISE rate to \$6.50 before making this comparison appears reasonable. It would appear that OISE probably received a competitive rental rate although it does not appear to be an outstanding bargain.

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C.B.

(Mr. Shibley)

Now was it brought to your attention that there were difficulties in making a comparison between the OISE building and the leased space by Hydro?

Mr. Gathercole: No.

Mr. Shibley: Then, on page five, the last sentence of paragraph two on that page, "after referencing the mortgage rate of $8\frac{1}{8}$ per cent, the comment by Mr. Cameron is, "this interest spread"; I ^{had} better read the background to that;

It appears the mortgage rate of $8\frac{1}{8}$ per cent was finalized around May 15, 1969, as the final building rental figure was established by an amending agreement of that date. An interest spread between $8\frac{1}{8}$ per cent and the yield based on the May 15, ~~1968~~ 1969, market price of a then-recent Ontario Hydro bond was established. This interest spread was then applied to the current ~~yield~~ yield of the latest Ontario Hydro issue to obtain a comparative mortgage interest rate of $8\frac{5}{8}$ per cent.

I'm referencing this and, in terms of the rate of interest that was part of the Canada Square submission, did you have this data available to you from your staff at the time you were considering the interest rate which was part of the proposal made by Canada Square?

Mr. Gathercole: I presume that data of this sort would be part of the continuing study and financial analysis of the OISE terms as well as the terms that ^{were being evolved} ~~would be evolved~~ for the arrangement between Ontario Hydro and Canada Square, ultimately worked out. Now, this part I find interesting but

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V.H.

EVIDENCE

Mr. Gathercole: That is the ~~answer~~ that was being submitted to us by those who had charge ~~with~~^{of} these responsibilities.

Mr. Shibley: Yes. So that the cost of maintenance also was a prominent circumstance in your thinking as to the way you were going to develop this site?

Mr. Gathercole: Yes.

Mr. Shibley: Now then on the last page, 7; "the claims of Jim Patter of Canada Square Corporation that their capabilities^{ties} in building design and construction produced excellent office & facilities at competitive prices. ~~Should~~^{Should} be verified. Consequently, their expertise would be of more value to ~~the~~ Ontario Hydro if the redesigning of the proposed Head Office became necessary." I put to you, Mr. Gathercole, ^{that would} ~~that~~ be the substance of your evidence today - is that correct?

Mr. Gathercole: Yes.

agree

Mr. Shibley: You ~~agree~~ with Mr. Cameron in that respect? "Although Ontario Hydro does not require outside expertise in building maintenance, ^a ~~the~~ lease-back arrangement would have the advantage of providing a business tax exemption which would amount to at least \$600,000 annually." Now, would you please explain that to the committee?

Mr. Gathercole: That was the estimate that was made and it was probably realizeable by this type of arrangement which entitles the developer to some ~~with~~ write-off, that's my understanding of it.

Mr. Shibley: Well, we will leave that to Mr. Cameron. It goes on: "If you wish us to pursue review of the OISE arrangements"---

Mr. Bullbrook: I am sorry to interrupt you but I didn't understand and I apologize. Do I take it that the advantage accrues to Canada Square and not to Hydro? Is that the answer?

Mr. Shibley: Well, I think---

Mr. Bullbrook: (inaudible)

Mr. Shibley: ---it will evolve later on, Mr.

Bullbrook, according to the material I have read, that there are a list of advantages to the developer who enters into a lease-purchase agreement in terms of tax benefits and write-offs etc. You will hear evidence in that respect. ~~He has been heard to say that he~~
~~has been heard to say that he~~



H-052 follows

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PLG

(Mr. Shibley)

~~etc. and you hear evidence in that respect.~~ Now Hydro's posture ^{Fe} ~~reparable~~ to the transaction, and I am not giving evidence to that but rather telling you what is indicated in the material, and I am sure people from Hydro will say this;

Mr. Bullbrook: Well, may I help you, Mr. Shibley? I am sorry.

Mr. Shibley: I had better finish what I am going to say;

Mr. Bullbrook: All right. Fine.

Mr. Shibley: ~~because~~ because I don't want to leave the record incomplete, if you will permit me, the documentary material suggests that Hydro was intending to use these advantages to the developer as a negotiating factor in stipulating for better terms to Hydro. In other words, it would say to the developer;

"You have a list of five or six tax advantages built into this type of arrangement. We, therefore, should ~~have~~ ^{share} in the advantage by reduced costs to us, etc."

I gather, Mr. Gathercole, that is your organizations's position, from the documents I have read. Do you agree with that?

Mr. Gathercole: Yes I do, very much. You can carry on.

Mr. ~~Bullbrook~~ Chairman: Mr. Bullbrook?

Mr. Bullbrook: Well, I was just going to say, is that what Mr. Gathercole's answer was? Was that the intention of Mr. Gathercole's answer?

Mr. Gathercole: Yes, indeed. It is a part of the package, ~~and~~ ^{that} if there was some tax reduction, Ontario Hydro ~~is~~ ^{participating} in the general benefits which ~~is~~ ^{would be} realized ~~from~~ ^{from} But, Mr. Chairman, we have technical people who can explain this much more adequately than I can.

Mr. Shibley: All right. Fine. And then he goes on, as I say, in the last paragraph and simply says:

"We will require information from Mr. Barry Brooks. However, the economic analyst group is interested in

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(Mr. Shibley)

the broader scope, a complete study of the proposed Ontario head office building."

Now then, Mr. Gathercole, this appears to be ~~the first step~~ a giant step forward in the direction of a careful examination of the lease-purchase type of transaction on July 16, 1971. Do you agree with that?

Mr. Gathercole: It is one of the, I would say, significant steps in this direction, yes. It is one in a series.

Mr. Shibley: Yes, but the material indicates to me, and I am now referencing an ~~xxx~~ exchange of correspondence you had with Mr. Pigott of Pigott Construction, which I will have produced to you, this is an exchange that he wrote to you on June 24. You answered him on July 20 of 1971. Mr. ^{Chairman,} ~~Executive (Audible)~~ ~~and~~ perhaps we can make the letter of June 24, Exhibit 15.

Mr. Chairman: 15.

Mr. Shibley: And your answer of July 20, Exhibit 16, and without getting into it in detail, ~~is~~ is it correct that Mr. Pigott was inquiring of you as to whether you were going forward with your plans to build a building and indicating an interest in ~~the~~ tendering on it, and your answer was, to the effect that -- I notice in the second paragraph:

"I would hope that we might make a start by next spring, and if you are over this way on some occasion, you ~~xxx~~ might have a chat with our commission architect Mr. Candy."

Do you notice your statement?

Mr. Gathercole: Yes.

Mr. Shibley: I think it important to this committee to know, Mr. Gathercole, was it still a matter of reserved judgment on your part as to whether you were going to go ahead with the building as originally planned, as opposed to undertaking a brand new building on a lease-purchase arrangement, as late as July 20 of 1971?

Mr. Gathercole: In my own mind, the field was still open, the options were still to go one way or the other, although we were beginning to arrive at conclusions that the course to move

(Mr. Gathercole)

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towards placing this matter in the hands of the developer would be more compelling to us, more compelling for the one reason and primary reason -- there were ancillary reasons -- but the primary reason was that our capsule needs to finance our generating and transmission ~~transmission~~ facilities were growing so rapidly that we should give what relief we could to the money that we would be requiring from those sources, and but it was still in my mind. I mean, ~~me~~ who knows what is going to happen and that the ~~tenor~~ ^{is} that I found myself still in the middle of 1971 and the field ~~was~~ completely open, but, we are moving in the direction, very definitely, of a lease-purchase type of arrangement. (All right.)

Mr. Shibley: Well, then, I want next to produce to you a memorandum dated July 26, 1971, prepared by Mr. Cameron again and again directed to Mr. Smith. Now this is the same group of people involved in the financial side as were involved with the memorandum of July 16 that we reviewed in some detail. Have you had an opportunity to examine this memorandum?

Mr. Gathercole: I did not receive this one Mr. Council^{or}llor, Mr. Chairman, ~~but~~ ^{but} I have seen it since, yes.

Mr. Shibley: Again, this was not a document produced to you as part of the instructional material, is that correct?

Mr. Gathercole: That is correct.

Mr. Shibley: And it was neither available to members of the commission at the time, ~~was it?~~

Mr. Gathercole: No, it wouldn't have been made available *to the members of the commission.*

Mr. Shibley: All right. Now I want to go over the content of this with you, Mr. Gathercole. You notice it starts:

"The purpose of this memo is to provide additional information obtained in a meeting with Barry Brooks of OISE and correct or expand certain information in my memo of July 16, 1971 on the same subject."

Now, are you aware, Mr. Gathercole, as to who gave instructions to Mr. Cameron to so to speak, go at it again in terms of his analysis of the ^{the} OISE arrangement?

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Mr. Gathercole: I am not aware who said go ahead, but it was part of the on-going study of how we were going to bring about the financial conditions in order to realize a new administration building.

Mr. Shibley: Well, Mr. Gathercole, I am somewhat more interested in this than your answer satisfies. I would like to know and I think the committee wants to know what information you ~~HAVE~~ as to who gave instructions to Mr. Cameron at a time between his memorandum of July 16 and his memorandum of July 26 to prepare supplementary material ~~preferable~~ to the OISE building?

Mr. Gathercole: We ~~can~~^{CAN} obtain that information for you. I am sure there are others here who could answer that, but I am not in a position to.

Mr. Shibley: Well, if you will undertake to inform yourself and let us know that, I would appreciate it as a matter of record.

Well, then, this memorandum goes on, and it makes reference to ~~me~~ correcting or expanding upon certain information, in the introductory portion, as set forth in the earlier memo and additional information to Canada Square Corporation and Jerry Moog.

~~Jerry Moog is the principle shareholder of Canada Square Corporation, who conducted all of this building arrangement with~~

H 53 follows

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4.00-4.10p.

B.A.

K-53-1

(Mr. Shibley)

"Jerry Moog is the principal shareholder of ~~the~~ Canada Square Corporation. He conducted ~~I~~ all building arrangements with ~~Barry~~ Barry Brooks of OISE on a personal ~~has~~ basis. During construction, OISE was given the opportunity to choose between different building materials that sometimes resulted in high costs to Canada Square. Barry Brooks found Jerry Moog to be honest and a gentleman, fulfilling all his commitments whether verbal or written, ^{Now was} ~~and with~~ that information communicated to commission in the ultimate?

Mr. Gathercole: No, it wasn't.

Mr. Shibley: All right. ^{12/}Then, again, I am ~~a~~ ~~summarizing~~ portions of this; members of the committee can read the it for themselves. On page 2, ^{12/}second paragraph starts off -

"Profit appeared to be secondary to Jerry Moog's quest for quality and the right design in the OISE building."

Then instances are set out. And in the third paragraph -

"To ensure quality construction, Canada Square provides two construction superintendents at each development. One looks after all the financial matters of the project, leaving the other superintendent free to concentrate on the actual construction of the building."

And the last part of the last sentence in that paragraph -

"The OISE board, however, would not approve the extra expense ^{12/}but Jerry Moog absorbed this cost as his standard of quality would not permit an unfinished roof in one of his buildings. Jerry Moog ~~has~~ indicated to Barry Brooks that his company will not obtain a profit from one building for about 10 years. ~~Barry~~

(Mr. Shibley)

The books of Swiss-Granada Holdings are open to the inspection of OISE if they wish to check on costs and profits."

Then, on the next page there is a reference to federal sales tax savings wherein OISE will obtain a sales tax refund of about \$800,000 because Canada Square had paid the tax and OISE was entitled to recon it.

Then the next heading is "Correction, or expansion of information ⁱⁿ an earlier memo" and he sets out a comparison of rental rates. On page 4, the middle paragraph, again, reference was made to certain financial data -

"Complete amortization of the land costs of about \$1,350,000 over the 30-year lease term at 8-1/8 per cent would result in a charge of \$0.24 per square foot of land, or increase ~~in~~ ^{the} comparative ^{active} rental ^{to} \$6.35. Comparative rates of \$6.27 to \$6.35 per square foot is competitive, especially when it is considered that OISE received accommodation specifically designed to its needs."

Then, finally, on page 5 -

"Mr. Barry Brooks claims that the \$1 million difference between costs of the building and a mortgage was not a Canada Square Corporation profit. He feels this difference was more than offset by financing and legal costs."

And then comes the conclusion.

"Additional facts gleaned from my meeting with Barry Brooks and his complete satisfaction with his dealings with Canada Square Corporation indicate that serious consideration of Canada Square Corporation as the developer for the Ontario Hydro's head office is warranted."

H-53-3

(Mr. Shibley)

Now, I have highlighted this document for you, Mr. Gathercole, in order that I might put this question to you: Would you agree with me that the memorandum, to begin with, is very complimentary to Canada Square's efforts at the OISE building?

Mr. Gathercole: Yes, it is; and the relationship with OISE.

Mr. Shibley: Yes. And further, I put to you, designed to encourage careful consideration, or at least, serious consideration, of Canada Square to be the developer of Hydro's head office building. Do you agree with that?

Mr. Gathercole: Yes.

Mr. Shibley: And the whole thrust of this document is to support the selection, or at least, to support careful consideration of Canada Square as the entity to undertake ^{the} new building on a lease-purchase arrangement. Is that right?

Mr. Gathercole: That is true.

Mr. Shibley: And when one compares the content of that memorandum with the content of a memorandum on the same subject of July 16, 1971, there is some material improvement in the assessment that Mr. Cameron made as reflected by those two documents, is there not?

Mr. Gathercole: The first is a more cautious, exploratory approach, and the second one is, certainly, much more favourable.

Mr. Shibley: Much more favourable. And again, I remind you that you said in the first document that it would appear that OISE probably received a competitive rental rate, although it does not appear to be an outstanding bargain, and the referenced different considerations that I won't repeat again.

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Mr. Shibley)

you, but you would agree with me that there was a measurable difference in ~~common~~ appraisal on the part of Mr. Cameron as reflected by those two memorandums.

Mr. Gathercole: I presume it stemmed from a further visit and discussions, and I agree with you.

Mr. Shibley: What I want to know, Mr. Gathercole, is was the commission, as a whole, or were you, as its chairman, ever alerted to the circumstance of this very much improved assessment between the first run at it by Mr. Cameron and the second run at it?

Mr. Gathercole: No, I wasn't. I didn't see the documents. These memoranda were, sort of, inter-office and didn't come to me. I have seen them of late, in recent weeks, or days, but I hadn't seen them before.

Mr. Chairman: Despite the fact that you hadn't seen them before, I am marking this as Exhibit 17. I think we have one that with one or two other documents.

Mr. Shibley: Thank you.

Mr. Chairman: ~~and~~ and I trust it can be properly identified later on.

Mr. Shibley: Yes, well, I am going to call Mr. Cameron and Mr. Groom later on.

Mr. Deans: May I ask a question?

Mr. Chairman: Mr. Deans.

Mr. Deans: Did Mr. Candy inform you of the involvement of the other staff members, the degree of involvement of the other staff members, after you sent him a copy of the letter in answer to Mr. Pigott's letter of 1st June 24? Am I making myself clear?

Mr. Gathercole: I am so.

Mr. Deans: Let me just take you to the July 20 letter in which you answered Mr. Pigott.

Mr. Gathercole: Yes.

Mr. DEans: And you sent a carbon copy to Mr. Candy. Did Mr. Candy then inform you of the degree of involvement of the other staff members of Hydro, with the degree of investigation that had been conducted, and the conclusions ~~that~~ which were being formulated by these people as a result of the investigations of the Canada Square - OISE arrangement?

Mr. Gathercole: It wouldn't be Mr. Candy's responsibility to advise me of what the finance people were undertaking by way of analysis of these matters. We were very desirous of trying to explore what would be feasible methods by which we could obtain an administration head office, and our staff had a general directive to proceed and make analyses, but we weren't sitting there saying, do this, and do that. They were undertaking them in the way that they felt would be useful in ultimately arriving at some concrete proposals.

Mr. Deans: ~~Yes~~ I am sorry, I notice Mr. Candy's name is not one of those on the carbon copies of either of the memorandums. ~~What he has done is to~~
~~investigate of the~~

(Tape H-54 follows)

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(Mr. Deans)

...I notice that Mr. Candy's name is not one of those on the carbon copies of either of the memo memorandums. Would he be familiar with the involvement of the financial people in assessing the Canada Square-OISE arrangement?

Mr. Gathercole: You will have to ask Mr. Candy that.

I don't know.

Mr. Deans: Would you expect him to be?

Mr. Gathercole: In later analyses, I know that he was involved. Whether he was at this stage, I am not in a position to answer. I don't know.

Mr. Deans: Well, just one other question. Do you think that your answer to Mr. Pigott was an ~~accurate~~ accurate reflection now of the circumstances that were actually occurring in Ontario Hydro at the time?

Mr. Gathercole: I do. I think it was; yes.

Mr. Deans: Oh, am I correct in my note that you did visit the OISE building on July 11, 1971?

Mr. Gathercole: That's right; I did.

Mr. Deans: It was all during this same period?

Mr. Gathercole: Yes.

Mr. Chairman: Mr. Shibley.

Mr. Gathercole: I might say, Mr. Chairman, if I might, that I had never ~~be~~ visited the OISE building at any time before, and although various references have been made to it, and I thought I would go up and have a visit ~~with it~~ visit at that building to see what it was like.

Mr. Deans: And you - well, if I may then, you answered Mr. Pigott. You received a letter from Mr. Pigott prior to your visit to the OISE building, which obviously wasn't just prompted out of goodwill, and you answered him after you had seen the OISE building, ~~but~~ you didn't anticipate that the circumstances were somewhat different at that point from - ?

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Mr. Gathercole: No.

Mr. Deans: You didn't, eh?

Mr. Gathercole: As a matter of fact, it was just sheer coincidence, that visit and my response to Bill Pigot. The field was wide open.

Mr. Shibley: Mr. Gathercole, I would like to proceed to you -

Mr. Bullbrook: Are you finished with this, Mr. Shibley?

Mr. Shibley: I am, yes.

Mr. Bullbrook: Would you consider the possibility of questioning Mr. Gathercole in relation to the use of the word "the developer"; as to whether any policy had been established?

Mr. Shibley: Mr. Gathercole, I think Mr. Bullbrook is referencing page five of the exhibit, the last paragraph on that page. You will notice that Mr. Cameron, by way of conclusion states: "Serious consideration of Canada Square Corporation as the developer for the Ontario Hydro's Head ~~Office~~ Office is warranted", and I think what the member is interested in knowing is what stage had personnel in Hydro reached respecting the selection of a developer for the head office building as of July 26, 1971?

Mr. Gathercole: This would be Mr. Cameron's interpretation of the situation at that time. There was no doubt ⁽ⁱⁿ⁾ wide currency that maybe the ~~a~~ developer-lease-purchase/^{route} might be possibilities; but I would think that this would be not a conclusion that ^{it} ~~he~~ was going to build ^a ~~the~~ lease-purchase route, but this was his, perhaps, way of expressing it; particularly as he had been speaking about the OISE building which had been along the lease-purchaser term payment way.

Mr. Shibley: Mr. Gathercole, I think the question rather ~~has developed~~ is directed to who the developer should be, presuming that you did go the lease-purchase route, and the reference in the memorandum is that ~~that~~ Canada Square

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(Mr. Shibley).....

should be considered as the developer for the Ontario Hydro head office. What do you have to say as to the state of his thinking in respect of the ~~el~~selection of who would be the ~~develop~~ developer?

Mr. Gathercole: I would think he was expressing the view that Canada Se Square represented ~~the~~ a possibility, and worthy of some consideration.

Mr. Shibley: Well, let me ask you further questions. Had it yet been established that you would select one ~~develop~~ ~~develop~~ developer, and deal with him alone, as from day one?

Mr. Gathercole: No.

Mr. Chairman: Have you any additional questions?

Mr. Bullbrook: Yes, I would like to ask; I infer from the use of the article "the" developer, probably wrongly, the establishment of a policy prior to July 26, that a ~~develop~~ developer, in point of fact, would develop the need for Hydro's head office facility. Am I correct in assuming no such policy?

Mr. Gathercole: There was no such policy.

Mr. Bullbrook: At that time.

Mr. Gathercole: No.

Mr. Bullbrook: So that from your level of administration, no one had ever authorized administration junior to yourself to regard the development route as the only route?

Mr. Gathercole: No.

Mr. Shibley: Going one step further, no one from the level of the Commission itself, or yourself as Chairman, had authorized the selection of a ~~develop~~ developer, who would do the lease-purchase should you decide to go that route as of July 26, 1971. Is that correct?

Mr. Gathercole: ~~Yes~~ Absolutely.

Mr. Bullbrook: Thank you.

Mr. Shibley: Well, then I want to produce to you,

Mr. Gathercole, a further memorandum dated August 18, 1971.

Mr. Renwick: Mr. Chairman, may I just ask Mr. Gathercole one question related to the relationship between Exhibits 14 and 17?

Mr. Chairman: Fine, Mr. Renwick; you better let them again for Mr. Gathercole. The Exhibit 14 is the letter from Mr. Cameron to Mr. Smith, the first one; and then 17 is the second one between the two people of the 26th of July.

Mr. Renwick: Yes, I am referring to the two memoranda; one of July 16 from Mr. Cameron to Mr. Smith, and one of July 26, of Mr. Cameron to Mr. Smith.

Mr. Genest: Mr. Chairman, could these papers be placed before the witness if he is going to be asked questions about them.

Mr. Chairman: Yes, that is a reasonable request.

Mr. Genest: I have the July 26th.

Mr. Chairman: I think they are probably back here if you will just give the clerk a moment to do that.

Mr. Laidlaw: Out of curiosity, Mr. Chairman, this is Exhibit 16, isn't it, July 26th memorandum?

Mr. Chairman: No.

Mr. Bullbrook: Seventeen.

Mr. Laidlaw: Well, what is ~~that~~ 16?

Mr. Deans: The letter ~~from~~ to Pigott.

Mr. Shibley: It is an exchange of letters.

Mr. Deans: The letter ~~from~~ ^{to} Pigott.

Mr. Chairman: I think we have the right ones then.

Mr. Renwick: Mr. Gathercole, at the end of Mr. Cameron's memorandum of July 16, in the last paragraph he refers to two alternatives; "If you wish us to pursue the ^{rev} arrangement, etc. we will require additional information from Mr. Brooks. However, the economic analysis group is interested in the broader scope of complete study on the proposed Ontario Hydro head office." And then memorandum, Exhibit 17, being the memorandum of July 26 is obviously the first alternative; nam

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(Mr. Renwick)

~~Does~~ further information from Mr. Brooks about the OISE arrangement with Canada Square. Do you know who instructed or requested or asked or suggested to Mr. ^aCameron that he should pursue the review of the OISE arrangement with Canada Square to obtain the further information from Mr. Brooks?

Mr. Gathercole: I do not.

Mr. Renwick: Thank you.

Mr. Genest: We have undertaken to get that.

Mr. Shibley: Yes, I think Mr. Renwick, that was asked by me and I asked for an undertaking that they inform themselves.

Mr. Genest: Thank you.

Mr. Chairman: Back to you, Mr. Shibley.

Mr. Shibley: Well, I want to ~~be~~ deal next, I don't know. ~~Has~~ the witness ~~before~~ him the memorandum of August 18, 1971, from Mr. Dean to Mr. Smith?

Mr. Chairman: This was an exhibit?

Mr. Shibley: No, it is a new one.

Mr. Chairman: This is a new one. Do you have that, Mr. Gathercole?

Mr. Gathercole: Yes, I have.

Mr. Chairman: I will ^{mark} ~~mark~~ it Exhibit 18 now, if I may. Again, ~~is~~ it will be ~~proved~~ later on, Mr. Shibley ~~will~~ tells me, and so I will mark it now as Exhibit 18.

Mr. Shibley: Now, Mr. Gathercole, ~~the~~ first may I ask, have you seen this document prior to the deliberations of the Commission in July 1972.

Mr. Gathercole: I have not, Mr. Chairman.

Mr. Shibley: I want to go over ^{its} content with you.

Now, Mr. Dean is the senior official in the ~~the~~ Finance Department, you made reference to seniority earlier. Is that correct?

Mr. Gathercole: ~~The~~ ^{the} Manager of financial policy research.

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~~(Mr. Gathercole)~~

Mr. Shibley: And he is a very ~~responsible~~ responsible individual within Hydro. Is that correct?

Mr. Gathercole: Yes; he is one of our senior finance people.

Mr. Shibley: Yes. And he starts off: "Bob Cameron recently reviewed the financing of the OISE building in a memoranda dated July 16, and July ~~21~~ 26, 1971. The memoranda do not verify that the type of financing made available to the Institute was primarily responsible for resulting in a low rental rate as claimed ^{BARRY} by ^{BARRY} ~~Brooks~~"

(Tape H-55 follows)

(Mr. Shibley)

~~Now stopping there, had the commission, when it deliberated upon this contract, been given this information in any manner whatsoever? ~~YES, BY MR. DEAN (LAUGHED)~~ No? Then let's go on: "Unless there are some tax advantages or other ways in which profits have been achieved for the builder, there does not seem to be any basic reason why the method of financing used should have any significant advantages over direct financing arranged by Ontario Hydro." Now were the members of the commission alerted to that conclusion on the part of Mr. Dean at the time of its deliberations of the agreement?~~

Now stopping there, had the commission, when it deliberated upon this contract, been given this information in any manner whatsoever? ~~YES, BY MR. DEAN (LAUGHED)~~ No? Then let's go on: "Unless there are some tax advantages or other ways in which profits have been achieved for the builder, there does not seem to be any basic reason why the method of financing used should have any significant advantages over direct financing arranged by Ontario Hydro." Now were the members of the commission alerted to that conclusion on the part of Mr. Dean at the time of its deliberations of the agreement?

Mr. Gathercole: No they were not, Mr. Counsellor. I did make some comments about this yesterday.

Mr. Shibley: Yes. "Apart from anything else, the legal cost in establishing the OISE arrangement must have been prohibitive. During the building and interim financial arrangements, ~~plots~~ plots and buildings were transferred to third parties and back again and the whole arrangement was extraordinarily complicated to the degree that even the final price of the building is not really apparent in the documentation." Was that circumstance brought to your attention at the time of your ~~deliberation~~ deliberation?

Mr. Gathercole: No, it wasn't.

Mr. Shibley: "As you are aware, I still feel that one of the least costly methods of financing the building, without disadvantage to Ontario Hydro or its employees, would be to arrange a loan through the pension fund." Was that a consideration

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(Mr. Shibley)

reviewed by the commission?

Mr. Gathercole: No, it has been the commission's policy that it shall not be employed to finance Ontario Hydro facilities.

Mr. Shibley: You mean the pension fund would not be used for that purpose?

Mr. Gathercole: The auditors in the past have indicated that they didn't look kindly upon ~~us~~ ^{us} doing so.

Mr. Shibley: So that ~~the~~ ^{was} if pension fund ^{was} ~~the~~ source of funds at all, it was considered against the background of that advice from your auditors?

Mr. Gathercole: Yes, that's right.

Mr. Shibley: ~~It~~ ^{"It"} goes on; ~~it~~ ^{it} would be possible to do some work on this as well as other alternative means of financing, but I would prefer to do it at a time when we had specific authority to go ahead alone or with other people to undertake a broad study into the whole question of a new building or not."

Now, just stopping there, would you agree with me, Mr. Gathercole, that as at August 18, 1971, Mr. Deans started off with a negative attitude towards the OISE-type arrangement so far as adopting it for the Ontario head office building?

Mr. Gathercole: I think he was flashing some caution lights.

Mr. Shibley: All right. Now then, I would ask you to ~~answer~~

Mr. Bullbrook: Mr. Shibley, I take it you are finished with this?

Mr. Shibley: Well, I am and I'm not, ~~but~~ ^{ask} go ahead.

Mr. Bullbrook: Do you mind if I question ~~Mr.~~ ^{ask} Mr. Gathercole, you said it was a matter of ~~established~~ ^{established} policy that Hydro would not deal with its employees' pension

(Mr. Bulbrook)

Fund. Why wouldn't the manager of your financial policy research division know about that policy?

Mr. Gathercole: What he was suggesting is that this might be reconsidered, that ~~perhaps~~^{is} the essence of the comment, that maybe we ought to reconsider and see whether funds from the pension ~~fund~~ could be employed in some facility, in an investment, in an office building or something else. Our policy has been, and it is one which is consistent with the advice that we have had ~~from~~^{from} our auditors, that pension funds should not be invested in your own equipment or your own facilities. In the past, frequently, ~~it has happened~~ I wouldn't say frequently, but on occasion - where this has occurred - and it has happened in the past - the pensioners who are anticipating to retire on the benefits that have been accumulated over a long period of time found that the investments that had been made were not available to them, and this has been one of the cardinal rules. Maybe it is an over-safe rule. But we operate the pension fund in a sense at arm's length, as it should be, because the pensioners of Ontario Hydro have a vested interest, and right, in regard to the accumulations ~~that are~~^{that are} made on their behalf.

Mr. Bulbrook: I regard ~~that~~^{your policy} as quite meritorious, ~~I may~~^{T MAY} say, ~~as of your policy~~. I take it from your response that the manager of your financial policy research branch regarded the policy as a malleable one?

Mr. Gathercole: In every organization, you get different points of view and you accommodate them. I don't disregard this as a point of view which merits consideration, but on the other hand, in every organization, you

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(Mr. Gathercole)

find differences in the assessment, because ~~the~~ one
is interested in one ~~phase~~ response of the activity and
is interested in another phase, and that's exactly the
should be because we must have, in an organization as
as Ontario Hydro, these countervailing interests.

Mr. Bullbrook: I see. Thank you very much.

Mr. Chairman: Does that answer you, Mr. Bullbrook?
We have been at it about an hour and a half, Mr. Gathercole.
Would it be all right if ~~we~~ take about a five-minute break?
We will recess until 25 minutes to five.

H 55 - 1 follows



Mr. Chairman: Mr. Shibley, if you will proceed again.

Mr. Shibley: Thank you, Mr. Chairman. I will ask the clerk to produce to Mr. Gathercole the memorandum of October 6, 1971. Attached to it is a fairly comprehensive analysis~~es~~ respecting the use of a lease-purchase arrangement for the head office building. Mr. Gathercole, again, have you seen this memorandum previously?

Mr. Gathercole: This is not one that I have seen; that is up until recently.

Mr. Shibley: Yes.

Mr. Gathercole: It wasn't in my file.

Mr. Shibley: All right. Now then, we will make that the next exhibit in any event.

Mr. Chairman: Number 19, I believe.

Mr. Shibley: Yes. This, again, is Mr. Cameron directing an analysis to Mr. Dean, and you will note it starts, "Schedules are attached setting out the assumptions and results of comparing conventional bond financing, a mortgage and a lease for the proposed head office building. Conventional bond financing is the most economical alternative. Lease financing through deferred tax benefits provides a lower cost alternative than mortgage financing when the same initial rates are used. The tax savings to the builder through leasing rather than selling the building are influenced somewhat by the proposed decrease in the corporate tax rate from 50 per cent for 1972 to 46 per cent for 1976 and subsequent years, under the proposed tax changes announced in the recent budget speech.

"Some ~~rough~~ ^{rough} approximations on maintenance costs indicate that this is an area that requires review. Based on a comparison of maintenance allowances in the OISE lease and facility costs for Ontario Hydro's administration building, it appears that Ontario Hydro maintenance costs are high.

(Mr. Shibley)

DT

Maintenance costs are a substantial part of facility costs and in our estimates places the financing of the building through bonds with the normal Ontario Hydro maintenance second to lease financing including maintenance.

⁶"It must be remembered the attached schedules are based on assumptions and procedures that have not been confirmed by a review of the actual practice in the industry.


Now, just dealing with the content of this memorandum, Mr. Gathercole, I notice that Mr. Cameron appeared to confirm that, on analysis, maintenance costs of Ontario Hydro appear high by comparison with the maintenance charges that are part of a lease-purchase transaction at the OISE building. Is that correct?

Mr. Gathercole: Yes, I think it is.

Mr. Shibley: Was it to this that you were referring earlier respecting your maintenance costs?

Mr. Gathercole: Yes, it was.

Mr. Shibley: He also, on the other hand, says "conventional bond financing is the most economical alternative ~~that~~ that would be the type of ~~the~~ financing which Hydro had been accustomed....."



(Mr. Shibley) ~~has been accounted~~ to undertaking up to this time. Is that correct?

Mr. Shibley: Now, yesterday you said that if you
able to finance your own building without affecting
owing capabilities, you most definitely would have
n that way, I is that correct?

money sources.

Mr. Shibley: Now, then, I'll just pass on immediately to the next exhibit which is a memorandum of October 21, 1971, from Mr. Dean to Mr. Sissons. Would that be exhibit 20, Mr. Chairman?

Mr. Shibley: Thank you. Now, first, Mr. Gathercole, had you or any member of the commission seen a copy of this memorandum during or prior to the course of your deliberations referable to the ^{building} ~~billings~~?

Mr. Shibley: Have you examined it since?

Mr. Shibley: Now, Mr. Dean, again, is the same man who gave the report of August 18, 18, to which we referred earlier, and which is exhibit 18. Perhaps the witness ~~could~~ could have that document in front of him also.

Gathercole this exhibit, too, exhibit 18, ~~18/19/20/21/22/23/~~

Mr. Bell. He has
~~1881/1882/1883/1884/1885/1886/1887/1888/1889/1890/1891/1892/1893/1894/1895/1896/1897/1898/1899/1900/1901/1902/1903/1904/1905/1906/1907/1908/1909/1910/1911/1912/1913/1914/1915/1916/1917/1918/1919/1920/1921/1922/1923/1924/1925/1926/1927/1928/1929/1930/1931/1932/1933/1934/1935/1936/1937/1938/1939/1940/1941/1942/1943/1944/1945/1946/1947/1948/1949/1950/1951/1952/1953/1954/1955/1956/1957/1958/1959/1960/1961/1962/1963/1964/1965/1966/1967/1968/1969/1970/1971/1972/1973/1974/1975/1976/1977/1978/1979/1980/1981/1982/1983/1984/1985/1986/1987/1988/1989/1990/1991/1992/1993/1994/1995/1996/1997/1998/1999/2000/2001/2002/2003/2004/2005/2006/2007/2008/2009/2010/2011/2012/2013/2014/2015/2016/2017/2018/2019/2020/2021/2022/2023/2024/2025/2026/2027/2028/2029/2030/2031/2032/2033/2034/2035/2036/2037/2038/2039/2040/2041/2042/2043/2044/2045/2046/2047/2048/2049/2050/2051/2052/2053/2054/2055/2056/2057/2058/2059/2060/2061/2062/2063/2064/2065/2066/2067/2068/2069/2070/2071/2072/2073/2074/2075/2076/2077/2078/2079/2080/2081/2082/2083/2084/2085/2086/2087/2088/2089/2090/2091/2092/2093/2094/2095/2096/2097/2098/2099/2100/2101/2102/2103/2104/2105/2106/2107/2108/2109/2110/2111/2112/2113/2114/2115/2116/2117/2118/2119/2120/2121/2122/2123/2124/2125/2126/2127/2128/2129/2130/2131/2132/2133/2134/2135/2136/2137/2138/2139/2140/2141/2142/2143/2144/2145/2146/2147/2148/2149/2150/2151/2152/2153/2154/2155/2156/2157/2158/2159/2160/2161/2162/2163/2164/2165/2166/2167/2168/2169/2170/2171/2172/2173/2174/2175/2176/2177/2178/2179/2180/2181/2182/2183/2184/2185/2186/2187/2188/2189/2190/2191/2192/2193/2194/2195/2196/2197/2198/2199/2200/2201/2202/2203/2204/2205/2206/2207/2208/2209/2210/2211/2212/2213/2214/2215/2216/2217/2218/2219/2220/2221/2222/2223/2224/2225/2226/2227/2228/2229/2230/2231/2232/2233/2234/2235/2236/2237/2238/2239/2240/2241/2242/2243/2244/2245/2246/2247/2248/2249/2250/2251/2252/2253/2254/2255/2256/2257/2258/2259/2260/2261/2262/2263/2264/2265/2266/2267/2268/2269/2270/2271/2272/2273/2274/2275/2276/2277/2278/2279/2280/2281/2282/2283/2284/2285/2286/2287/2288/2289/2290/2291/2292/2293/2294/2295/2296/2297/2298/2299/2300/2301/2302/2303/2304/2305/2306/2307/2308/2309/2310/2311/2312/2313/2314/2315/2316/2317/2318/2319/2320/2321/2322/2323/2324/2325/2326/2327/2328/2329/2330/2331/2332/2333/2334/2335/2336/2337/2338/2339/2340/2341/2342/2343/2344/2345/2346/2347/2348/2349/2350/2351/2352/2353/2354/2355/2356/2357/2358/2359/2360/2361/2362/2363/2364/2365/2366/2367/2368/2369/2370/2371/2372/2373/2374/2375/2376/2377/2378/2379/2380/2381/2382/2383/2384/2385/2386/2387/2388/2389/2390/2391/2392/2393/2394/2395/2396/2397/2398/2399/2400/2401/2402/2403/2404/2405/2406/2407/2408/2409/2410/2411/2412/2413/2414/2415/2416/2417/2418/2419/2420/2421/2422/2423/2424/2425/2426/2427/2428/2429/2430/2431/2432/2433/2434/2435/2436/2437/2438/2439/2440/2441/2442/2443/2444/2445/2446/2447/2448/2449/2450/2451/2452/2453/2454/2455/2456/2457/2458/2459/2460/2461/2462/2463/2464/2465/2466/2467/2468/2469/2470/2471/2472/2473/2474/2475/2476/2477/2478/2479/2480/2481/2482/2483/2484/2485/2486/2487/2488/2489/2490/2491/2492/2493/2494/2495/2496/2497/2498/2499/2500/2501/2502/2503/2504/2505/2506/2507/2508/2509/2510/2511/2512/2513/2514/2515/2516/2517/2518/2519/2520/2521/2522/2523/2524/2525/2526/2527/2528/2529/2530/2531/2532/2533/2534/2535/2536/2537/2538/2539/2540/2541/2542/2543/2544/2545/2546/2547/2548/2549/2550/2551/2552/2553/2554/2555/2556/2557/2558/2559/2560/2561/2562/2563/2564/2565/2566/2567/2568/2569/2570/2571/2572/2573/2574/2575/2576/2577/2578/2579/2580/2581/2582/2583/2584/2585/2586/2587/2588/2589/2590/2591/2592/2593/2594/2595/2596/2597/2598/2599/2600/2601/2602/2603/2604/2605/2606/2607/2608/2609/2610/2611/2612/2613/2614/2615/2616/2617/2618/2619/2620/2621/2622/2623/2624/2625/2626/2627/2628/2629/2630/2631/2632/2633/2634/2635/2636/2637/2638/2639/2640/2641/2642/2643/2644/2645/2646/2647/2648/2649/2650/2651/2652/2653/2654/2655/2656/2657/2658/2659/2660/2661/2662/2663/2664/2665/2666/2667/2668/2669/2670/2671/2672/2673/2674/2675/2676/2677/2678/2679/2680/2681/2682/2683/2684/2685/2686/2687/2688/2689/2690/2691/2692/2693/2694/2695/2696/26~~

Chairman: ~~Mr. /~~ Oh, he has a copy, has he? ~~Answer:~~

2

[Faint handwritten notes at the bottom of the page]

Mr. Shibley: Good.

(Mr. Shibley)

somewhat negative in respect of a lease-purchase transaction. You said in answer, I believe, ^{I'm} ~~is~~ paraphrasing, he was highlighting some of the hazards of that type ^{of} ~~the~~ and in his earlier memorandum. ~~And~~ I asked you to consider his attitude ~~of~~ of mind as reflected by his memorandum of August 18 and that of October 21 directed to Mr. Sisson. In this latter memorandum, he has the following to say:

"Some while ago Mr. Banks suggested ~~that~~ you be interested in our views of alternative methods of financing any new head office ~~x~~ building, in particular, the method used in the case of the OISE building on Bloor Street. We have done research in this area including a fairly thorough analysis of the OISE financial arrangements. And it goes on,

"We have considered three basic types of financing:

- (1) By ^{fe} ~~quotation~~ of a normal HEPC bond;
- (2) By conventional mortgage;
- (3) By lease with option to purchase.

"The OISE financing was very complicated but was basically accomplished by the last method and the final lease arrangement included a maintenance contract. Because of this latter factor, our review included a review of our own maintenance costs, compared with those which we might expect from a third party.

"Our review has concluded that,

- (a) probably the ~~cheapest~~ ^{lowest} cheapest cost per square foot can be obtained by self-financing with maintenance being provided externally."

Now, stopping there, Mr. Gathercole, Mr. Dean points ^{up} ~~out~~ what really amounts to a third alternative, that you finance and build your own building and go outside your organization for maintenance. Is ~~it~~ that correct?

Mr. Dean Gathercole: That's true.

May 28. 1973
4.40 - 4.50 p.m.
R.E.S.

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Mr. Shibley: Was that a third alternative ever considered at the commission level or by yourself as its chairman?

Mr. Gathercole: It has been considered as an alternative to an arrangement under which the developer provides the maintenance if the general maintenance and housekeeping do not come up to a satisfactory standard. It is always there ~~as~~ as an alternative. It doesn't mean that we are locked in ~~the~~ with the developer; it's an alternative. You ~~get~~ get somebody outside to do it. But there are some advantages nevertheless, economic advantages, in having the developer do it ~~because~~ because over a period of time it's his building and ~~he's got~~ ^{he's got} an incentive to ensure that it is well maintained, and the housekeeping is ~~isn't~~ ^{of} a good ~~standard~~ ^{standard.}

Mr. Shibley: Well, I'll come back to that in a moment. At the moment what I want to ascertain is whether you as chairman and/or members of the commission ever considered, as a third alternative, financing and building your own building and contracting out maintenance to an independent contracting firm engaged in that specialty?

Mr. Gathercole: Whether the commission considered it as a whole, ~~is~~ is doubtful, but certainly it was an alternative which I was aware of.

Mr. Shibley: And, in fact, Mr. Gathercole, you had been approached by certain maintenance firms to contract out ~~the~~ maintenance for your new building, had you not?

Mr. Gathercole: I am not aware of that, Mr. Counsellor, myself.

Mr. Shibley: All right. Well, then we go on.
"The next lowest cost alternative would be a lease arrangement with an option to purchase and including a maintenance contract. The main factors on which these conclusions are based are as follows:

"(1) That the money ~~cost~~ ^{cost} differential between a Hydro

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(Mr. Shibley)

bond and a conventional mortgage is about one and one-
per cent, and that a lease arrangement would be financ-
ed by a mortgage. ~~This is confidential and may not be a valid~~

(Tape H - 57 - 1 follows)

May 23, 1973
4.50 - 5.00 p.m.
H.R.

(Mr. Shibley)

~~It would be a disadvantage to have a lease~~

"This differential may not be valid in that if we are tied to a lease of less than 30 years at a rate which fully allows for return of principal^{at} to the lender and both the lease and the building are pledged as security, the normal bond mortgage rate spread would almost certainly not apply. This might be particularly so if the financing was arranged outside of Canada."

Now, stopping there Mr. Gathercole, was this circumstance in terms of the rate - I'm sorry, the cost of money on this type transaction - that the normal spread between a bond and mortgage rate would not be applicable to this type transaction?

Mr. Gathercole: The spread would be a factor in the decision as to whether to go ~~some~~ - the mortgage route, the lease-purchase route, in which the developer puts up the money, or by issue of a bond. It would be a factor. The mortgage rate is usually, and I think this is said here, about one and a half per cent higher than the bond rate, and there may be some spread too between what a developer might be able to realize ~~to~~ he had sources of capital.

Mr. Shibley: But what Mr. Dean is saying here, is he not, is that on a lease-purchase type transaction, and particularly if the developer is raising his money outside of Canada, the differential between the bond rate and mortgage rate should not be as great as the normal? Is that correct?

Mr. Gathercole: That is possible, yes.

Mr. Shibley: And were you alert to that circumstance particularly as it might affect your arrangements with Canada Square which had indicated that it was intending to raise its money outside of Canada?

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M.R.

(Mr. Gathercole: I would say no. I mean it does raise a question certainly in my mind. I mean I'm aware of the thesis that is being presented there. I mean there are a number of imponderables on it depending upon what the sources of capital are, at any moment of time.

There are some other aspects to this as to the question of what type of mortgage. However I think our financial people can go into that in very considerable detail much more than I because they are thoroughly conversant with those matters.

Mr. Shibley: All right. We will leave it for them.

Now let's go on and I think, Mr. Bullbrook, the portion of this exhibit will expand upon the matters that were being gone into in terms of advantages to a builder-developer ~~developing~~ ^{if} sets them out to a lease arrangement, particularly one with a maintenance contract as several factors favourable to a builder-developer, which is factored into the actual rate, could tend to offset an advantage in bond money costs set out above.

These are —

Mr. Bullbrook: Does that read rental rates?

Mr. Gathercole: Rental rate.

Mr. Shibley: I'm sorry. Thank you. It was rural and then changed to something — rental, thank you.

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4.50-5.00 pm

C.A.

(Mr. Shibley)

~~there's sure then changed to~~

" ~~A from Shibley~~ The builder-developer could probably make a profit of up to 10 per cent on the construction of the building (possibly more if he acquired the land and took a profit on this also). B:- If the building was built for rental purposes, the profit in A would be deferred indefinitely by being included in the rental. C:- A tax loss would be incurred immediately by the builder-developer as a result of the lease arrangement which could be valuable to the builder-developer if he had taxable income from other sources, against which he could offset the tax losses. (These tax losses could continue for some 15 years into a lease period of 30 years). D:- Any profit under a maintenance contract coupled with a lease would be ~~similarly~~ similarly deferred ^{for} tax purposes. E:- if the builder arranged his own financing, he may not pass on into the lease arrangement the true cost of the borrowing. F:- the builder may demand space in the building, which he can rent very profitably.

"From the above it is apparent ~~a~~ stopping before I go on, Mr. Gathercole. In the course of the deliberations respecting the Canada Square proposal and for that matter the other proposals, were these factors which weighed upon the builder-developer brought to the attention of the Commission?

Mr. Gathercole: In a variety of ways they were, yes.

Mr. Shibley: And you knew then that you had a formidable bargaining position in terms of the cost to Hydro of the lease-purchase arrangement - is that correct?

(Mr. Shibley)

~~usually construction of building, lease of building, maintenance, financial arrangements, etc.~~
unused or, say, the ground floor, the degree to which he pass on any part of these profits or the value to him of the deferral will depend upon the individual builder and his own financial circumstances.

" 3. The maintenance contract is something which a considerable amount of thought. Indications at the present time are that maintenance costs of our present head office are much higher than we would be expected to pay for similar square footage on a contract. Although we appreciate that our own costs probably include a number of costs not directly maintenance, and the fact that these are of value to the organization, there may be some considerable saving if only to the fact that wage levels of outside help may be significantly lower. We feel some attempt should be made to establish the costs differential which might be experienced."

And then comes an important part: "In summary, we think that an examination of the ~~XXXXX~~ OISE financing has thrown considerable doubt on the question of whether a building self-financed and self-maintained is the most economical course for Hydro to follow."

Now, stopping there, Mr. Gathercole, again, a reference to your description of Mr. Dean as a senior official, would that be a ²significant step forward in the conclusion in that respect to go the ~~lease~~ leased-purchase route, as opposed to building and financing your own building?

Mr. Gathercole: Yes, I would say it was a step, step in the series of analyses that were being made.

Mr. Shibley: All right. Now, at that time, and I talking as of October 21, 1971, were you made aware and were members of the Commission made aware that the thinking of people

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this
at the level of Mr. Dean had reached ~~the~~ stage?

Mr. Gathercole: ~~Mr. Chairman,~~ Mr. Chairman, there were informal discussions from time to time. There hadn't been any crystallization of thinking or thought on this. In my mind, and I can only speak for myself in this regard, but the field was still wide open. We were looking at it, but, on the other hand, things are always uncertain and indefinite. And we ~~were~~ proceeding along analyzing the lease-purchase type of an arrangement and what could be done, with respect to other developers. But if that road didn't prove to be, in the end, attractive, then it would be hoped that maybe we might proceed in another course. But, in the light of our growing financial problem and the heavy capital needs, we were definitely sort of arriving at a consensus that we ought to be moving forward. And I think this doesn't reflect a certain amount of internal thinking within the organization. Nothing definite. And I don't think you can say we drew a curtain at one low period of time and that was it; or anywhere along that period.

Mr. Shibley: Well, Mr. Gathercole, I want to distinguish, if I may, between people at the level of yourself as Chairman and members of the Commission, at one plane, and your administrative staff, if I may use that, starting from Mr. Gordon on down. You have used, repeatedly, the term "we" and I think it's important for us to know whether, when you say "we", are you including yourself, are you including members of the Commission; or are you talking about people at a level lower than, in terms of status within the Hydro organization, the Commission level?

Mr. Gathercole: I was speaking in a corporate sense. I was speaking in a corporate ~~xxxxx~~ sense and that wouldn't include the Commission. It might include my own interest in seeing that studies were proceeding, with respect to what course we would ultimately take. But all this work was being carried on by the

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(Mr. Gathercole)

officers of the Commission, well, below the Commission level.
And, certainly, I didn't know the studies that were proceeding.
These were being carried on under the, you might say, ~~the~~ direction
of the responsible officers;

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(Mr. Gathercole)

Mr. Sissons, Mr. Banks at that time, Mr. Gordon ^{was} would have been to try and find some answers; ^{E.T.} the commission was not party to it. No, nor was I party to it.

Mr. Shibley: All right. And you say you didn't know that these studies were going forward; were you advised or provided with the results of the studies at that time?

Mr. Gathercole: I wasn't provided with the number which we have been dealing with here. I was provided with, from time to time, perhaps another memorandum which was informing me of the studies that were going on. ~~Memoranda~~ But, not the content of the studies, no.

R.E. Hodgson: Mr. Counsel,
Mr. ~~Gathercole~~ / I still think that there is a good similarity between Mr. Gathercole's writing on the letter of June 3 to Max ~~Wetzel~~ Realty and the marginal note. It looks like the marginal note to me is in Mr. Gathercole's handwriting and it would indicate he is asking a question about this document at the time.

Mr. Shibley: Mr. Gathercole, would you look at the handwritten part on page 2. Is that your handwriting?

Mr. Gathercole: Well, I've got an equally bad hand in writing, but that isn't mine.

Mr. Shibley: It is not yours?

Mr. Gathercole: This is not mine, no.

Mr. Deans: Could I ask a question. Mr. Gathercole indicated that he may have received other memos from time to time, not exactly with this information but ~~quite~~ similar to it. Wouldn't we have copies of those memos if, in fact, there were memos sent?

Mr. Gathercole: I didn't say it at that period of time, not during this period. These were sort of internal memoranda.

Mr. Bullbrook: Well, ~~that's~~ that's very important, if I may. That's extremely important because, you see, counsel, Mr. Gathercole is asking you about your knowledge as a commission at this time. You said, in response, that you were receiving memoranda

(Mr. Bullbrook)

which didn't contain the contents of these memoranda, ^{which} ~~was~~ brought to your attention, as I understood your evidence, these ongoing studies. I certainly inferred from that that you had memoranda at this time.

Mr. Gathercole: I haven't received any of these memoranda. I didn't receive copies -

Mr. Bullbrook: I understood that -

Mr. Gathercole: - of any of these memoranda, no.

Mr. Bullbrook: I understood that. Well, I want to ^{my} clarify this.

Mr. Deans: I too want to clarify this that's why I raised it.

Mr. Bullbrook: Well, we'll let you clarify it.

Mr. Deans: No, we'll - I say, I think we'll both try to find out. Did you receive any written documentation of any kind, memos, from anyone in regard to any of these memos or the thoughts of the groups that were pursuing the financial arrangements of OISS?--During this period. During the year 197 from January to October ~~22~~ 21?

Mr. Gathercole: That I don't. If I received any it will ~~was~~ be in the documentation. It will be definitely in the documentation.

Mr. Deans: Is it your practice to be kept informed what goes on?

Mr. Gathercole: Yes, it is but -

Mr. Deans: Doesn't it strike you as odd that all that could be happening and no one told you?

Mr. Gathercole: No. No, it doesn't, no.

Mr. Deans: Sorry Jim.

Mr. Bullbrook: I wanted to point out for myself, Mr. Gathercole. The very first question that counsel put to you, essence of it was: "Were you aware that these ongoing studies were taking place?" Now, I say to you most respectfully ^{fully} sir, I never did answer that question. And the record will show that I

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never did answer that question and it's not that you attempting to be a evasive, and I can understand the difficulty. I'm sure that I can't remember what happened to me yesterday let alone recalling what happened back in October 1971. But the problem basically is I understand that counsel is attempting to solicit from you, for our benefit, whether the commission was aware that these studies, at a more junior level to your responsibility, were going on. And if they weren't who authorized them?

Mr. Gathercole: The studies were being carried on and I was certainly aware that studies were being made. I didn't know the exact form the studies were taking, but I did know that studies were going on. We've never given up the thought of all of ~~ultimately~~ ^{ultimately} having a building, of meeting our requirements, our staff requirements, by having facilities of our own on the site that had been ~~was~~ selected.

Mr. Bullbrook: Right.

Mr. Gathercole: ^{But} What form they were I don't know.

Mr. Bullbrook: I don't intend to usurp your function but, for example, ~~you were evidence to me yesterday that it was~~
~~arranged for you to meet with your personal~~
manager weekly.

~~It was arranged that.~~

~~Mr. Bullbrook: Oh, I see.~~

~~Mr. Bullbrook: I beg your pardon. I don't see the~~
~~general manager's office weekly of the assistant~~
~~general manager's office.~~

(Tape H58 follows)

(Mr. Bullbrook)

You gave evidence to us yesterday that it was a policy, as I understood it, for you to meet with your general manager weekly.

Mr. Gathercole: I didn't say that. ~~_____~~

Mr. Bullbrook: Oh, I am sorry.

Mr. Gathercole: I beg your pardon. I said the general manager held meetings invariably weekly of the assistant general managers.

Mr. Bullbrook: I see.

Mr. Gathercole: And of other directors. The general manager and I are in communication on a daily basis.

Mr. Bullbrook: Is it to the best of your recollection I am correct in assuming that the general manager would report detail to you?

Mr. Gathercole: Not necessarily on a study that is undertaken of this nature. He would certainly communicate to me any major significant changes or pressing current problems or difficulties, but this is a study that is going on, an analysis, which is going on, which is not pressing at that particular moment; it hasn't the highest priority.

We have people that are studying a variety of things in the technical field, in ~~the~~ engineering, means of controlling pollution and so on. Now he doesn't come up and tell me that this is going on by the pollution group, ~~the~~ studies by some other group, or designers for steam turbines or nuclear power stations. Those aren't the issues.

Mr. Bullbrook: Well, at your level of responsibility then may I assume that you were aware of the fact that your administration was looking into the various aspects of building the building yourself for utilizing the services of a developer for building the building?

Mr. Gathercole: I was aware of that.

Mr. Bullbrook: And that essentially was the awareness of the deal?

Mr. Gathercole: Yes.

Mr. Bullbrook: I am sorry, Mr. Chairman.

Mr. Shibley: On that point, I might tell the members of the committee that counsel to Hydro today provided me with an inventory of the content of Mr. Gathercole's file and it does not list any memoranda or other document referable to the matters that I have been dealing with to this point, except laterally neither have I come across such documentation otherwise in my review, but as I have told you I have now had additional materials given to me and I can't assure you that there is none, but I will be examining it.

I just mention that as explanatory of the circumstances ^{that} ~~no~~ document has been produced ^{changed} ~~by~~ this witness up to this point indicating a communication to him in a documentary manner of any of the matters that I am reviewing with him.

Mr. Bullbrook: Mr. Chairman, so counsel understands my purpose in this interjection, I understood, I believe, the intention of the very first question that counsel asked. The fact of the matter is that question was never answered and that question was essentially "were you aware that these studies were going on at that time"? Basically, I am satisfied now that the commission was not aware of the particularity of these studies at the time, and I draw no conclusion from that awareness. I just wanted to advise you that I feel aware of that now.

Mr. Shibley: I am not going to comment on it myself, Mr. Bullbrook. I would like to go on and ask Mr. Gathercole this question. Again, in the case of Mr. Dean, Mr. Gathercole, he seems to have had a different assessment of a lease purchase as reflected by his report of October

(Mr. Shibley)

21, compared with that of August 18. Would you agree with me as to that?

Mr. Gathercole: I think part of his conclusion is more disposed toward the lease-purchase than it was in his previous assessment of August 18, although he does flag a number of things in this document of October 21.

Mr. Shibley: Yes, all right, then if we ^{may} go on, I would like to produce to you a copy of a memorandum of October 1971 from Mr. Sissons to Mr. Dean. While we are waiting for that would you please tell us who Mr. Sissons is ^{part} what is his responsibility.

Mr. Gathercole: Assistant General Manager of Services and responsible for procurement of equipment and supplies for the whole Hydro organization as well as the furnishing of office space for the staff.

Mr. Shibley: Would he be one of your key personnel respecting decisions as to premises?

Mr. Gathercole: He would be under the general manager the key ~~person~~ ^{official}.

Mr. Shibley: All right. May we have that document made the next exhibit for continuity?

Mr. Chairman: Exhibit 21.

Mr. Shibley: In this memorandum, Mr. Gathercole, you will note that it is responding to the memo of October 21 from Mr. Dean and says, "In light of your generally favourable assessment of the economics of lease-back", and skipping part, "It seems me that the broader advantages of independent financing, combined with the opportunity to contract out maintenance on a quality standard tied to the head lease, point very strongly to this mode of proceeding. If this would be an attractive investment for pension fund, so much the better. And I am sure some developer would accommodate this in ~~max~~ part, at least. If we are like

(Mr. Shibley)

to proceed on this basis we shall have to tie down a very realistic specification with which to approach the development market. In view of the state of the economy and our own ~~business~~ increasingly urgent need for a long-term plan, higher priority must now be attached to bringing our theme to a conclusion on this approach". Now, again, Mr. Gathercole, having regard for the position held by Mr. Sissons and the responsibility he had vis-à-vis premises, would you say that this was a significant step forward ~~and~~ towards a decision on the part of your staff to recommend a lease-purchase transaction?

Mr. Gathercole: I would say it was, yes.

Mr. Shibley: And I notice that he talks here in terms of approaching the development market. Was there any discussion at your level at this juncture respecting a step towards obtaining competitive proposals?

Mr. Gathercole: I do not think so. I do not think so.

Mr. Shibley: Is it not a fact that as late as this date, October 26, the only developer that Hydro had, so to speak, sought out to communicate with was Canada Square?

Mr. Gathercole: I am not able to answer that in detail.

~~Mr. Candy~~ would have to answer that one. I frankly don't know.

Mr. Shibley: Is it not also a fact that to the extent that other developers were involved from about the fall of 1971 and thereafter, they initiated the communication with Hydro?

Mr. Gathercole: I think that would be so but I am not sure. Whether Mr. Candy or Mr. Sissons made any other approaches, I am not aware. I am not aware of them.

Mr. Shibley: So that, again, the suggestion that the development market would be approached was really not implemented. ~~Further Hydro waited upon developers to approach you.....~~

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5:20-5:
PLG

Shibley
(Mr. ~~Gathercole~~)
~~suggestion that the development market be approached is really~~

~~not implemented~~ Rather Hydro waited upon developers to ^{approach} ~~postpone~~

Gathercole: From the time of the shelving of the plans for the original building there had been periodic approaches, some approaches to me, as we have seen from Mr. Pigott and from other people, saying, "well, we would like to be interested in it", and ~~and~~ there were these various ~~communications~~ ^{communications} which were flowing in and ~~when~~ they came to me, and no doubt they were coming as well to Mr. ~~Shis~~ ^{Sisson}. I am sure of that, and to Mr. Candy. Any that came to me I simply referred them to Mr. Sissons.

Mr. Shibley: All right. Now, again, ~~was he aware~~ we moved forward in point of time to October 26, 1971; Was the commission, or yourself as its chairman, ~~was~~ alert and aware of the circumstance that Mr. Sissons and Mr. Deans, and, I gather, Mr. Banks were moving well along the road to a decision that Hydro should do a lease-purchase transaction?

Mr. Gathercole: No. I would have to say no. They were not aware.

Mr. Shibley: All right. I will produce to you a memorandum dated November 1, 1971, prepared by Mr. Dean. Have you read this memorandum?

Mr. Gathercole: As far as I am aware, Mr. ³³Councilor, I haven't seen this one before. I may have scanned it in the last few weeks, but it ~~is not~~ certainly isn't in my files. A copy was not sent to me.

Mr. Shibley: Mr. Chairman, may I ask that it be made Exhibit 22. In any event, I am going to call Mr. Dean as a witness.

Mr. Chairman: We have been accepting these all along on the basis that they be identified later on, so I will mark that Exhibit 22.

Mr. Shibley: I would like to go over this document with you, Mr. Gathercole. ~~This is covered~~
ⁱⁿ This ^{is} reference ^{to} a meeting attended by Mr. Sissons, Mr. Banks, Mr. Candy, Mr. Witbeck, and Mr. Dean.

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PLC

Mr. Shibley)

will just proceed:

"It was suggested that the plans for a new building drawn up a few years ago were not entirely suitable, and certainly the two phases originally suggested would now be compressed into a single phase. A further modification would be rental of ground, floor and first basement space to third party."

And there is a reference to a letter from Treasury which we will get to later on. I will perhaps read it now.

"Treasury have indicated in a letter dated September 3, 1971, that they are not anxious to expand reliance on foreign sources, the source of our marginal borrowings, when alternate methods of financing are possible. It was also considered that ownership, self-financing and self-maintenance of the building, although possibly but not necessarily the most economical course, was not obviously in the best interests of Hydro taking all factors, including intangibles, into consideration. It was even possible that potential criticism of a new head office building could be avoided if a lease-arrangement were entered into, particularly if the cost was comparable with competitive space available elsewhere."

How wrong could he be?

"A newspaper article related to government building leases was discussed"

For benefit of the members, I think this was about the time ^{when} there were ~~three~~ articles published ~~after~~ ^{and} comments in the House ~~after~~ ^{relating to} the leasing by Hydro.

"Taking all the above factors into consideration, it was agreed that the first step should be to obtain an indication from a number of builder-developers of the type of building which could be provided on the College

(Mr. Shibley)

Street site, built to our specifications, but built, financed and maintained by the builder, and the lease-cost per square foot which would result. Until such time as comparative lease cost figures were available, it would not be necessary for integrated finance planning to be involved, etc.

Now, here again, Mr. Gathercole, & here I gather is a meeting of people on the managerial level of Hydro. Is that correct? Mr. ~~Sisson~~^{Reading} ~~is~~ ^{is} one division, Mr. Banks finance, Mr. Candy architect, Mr. Dean another end of your financial operation. These are very responsible people, I gather, and collectively they held a great deal of authority. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And the conclusions, as evidenced by the memorandum in terms of the decisions arrived at, would likely be decisions upon which the commission itself would act. Is that correct?

Mr. Gathercole: Yes. They would have a very definite input into the recommendation that would be made to the Commission.

Mr. Shibley: Now can I ask you, were you aware of the decisions taken at the meeting on November 1 at that time?

Mr. Gathercole: Mr. Chairman, this is the memorandum that was sent to me, but I would like to say this; and I do want to emphasize it, that there was a general interest on the part of the Commission in resolving its problems with respect to finding accommodation for the expanding staff and ~~what~~^{what} ~~these~~^{these} gentlemen were ~~proceeding~~^{proceeding} ~~under~~^{under} the general guidelines to explore ~~but~~ we didn't know what types of conclusions they were arriving at that time, no.

Mr. Shibley: Now Mr. Gordon is the General Manager Hydro; it and all these people ultimately report to him, is that correct?

Mr. Gathercole: Yes. Right.

Mr. Shibley: I am producing to you a memorandum dated November 2, 1971, from Mr. Sisson to Mr. Gordon. Now may we have

(Mr. Shibley)

that made the next exhibit Mr. Chairman; Exhibit 23.

Mr. Chairman: Exhibit 23.

Mr. Shibley: Now I am not going to ~~read~~ read this ~~show~~ through, but it references the meeting of a previous day of the managers. It goes on to say:

"It appears to be a matter of some urgency, both because of concern ~~mf~~ about the economy and because of our own needs for long-term plans to get on with it," and

and he sets out certain considerations which are basic, namely;

"how can it best be financed without apparent interference with ^{power} ~~pay~~-programme financing? What is our best public position in relation to those who might see the building as a further demonstration of Frankensteinism?

"3. How can we get the best building custom-tailored to our specific needs, one ~~of them~~ which will ~~give~~ credit to ourselves, the government and the city; stand the test of time and ~~be~~ flexible use ^{over} the next 50 years or more without being monumental in character and in cost, and

"4. How can we best devise to help ~~pay~~ pay the way ~~for~~ a significant commercial tendency on say ground floors and first subgrade level. It appears our best interest would be served if we could find the right ~~practical~~ type of an lease-back entrepreneur. John Dean has done a preliminary study in which he points out that there are five main areas of profit on which a lease-back developer can diversify his risk, rate of return and tax deferral, and ~~he~~ ^{he} sets them out:

~~Under aggressive negotiation and~~

Tape H 62 follows

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(Mr. Shibley)

~~Under aggressive negotiation and competition we~~
 should be able to derive some benefit from this. Developers
 are, of course, adroit in protecting themselves at the expense
 of their customers. ~~It would be no mean trick to ensure~~
~~we had an agreement which~~ ^{both} in spirit and in
 law, constituted the right kind of partnership." Then
 he goes on later, "If you cannot find a developer and
 devise an agreement which gives us ~~the~~ assurance that we
^{will} not have to wrestle continuously to achieve the
 standard we want, then we should do the whole job ourselves."

The next paragraph: "We have, over a period of
 years, been approached by a number of ^{major} ~~major~~ developers. We
 are initially impressed with the developer of the OISE
 building and the apparently ~~the~~ very favourable leasing
 rate, and both our financial people and Ken Candy have, as
 you know, been exploring this in some detail." Now this
 comment, as you know, ^{stopping there,} ~~Mr. Gathercole~~ would indicate that
 Mr. Gordon was being kept apprised of what was going on
 in terms of the analysis, etc. Is that correct?

Mr. Gathercole: I would say so in this general
 way, yes.

Mr. Shibley: Just stopping here also, do you
 agree with me that as at November 2, 1971, ~~that~~ Mr. Sissons
 was indicating a preference for dealing with the party who
 developed the OISE building?

Mr. Gathercole: I would have to leave him to say
 whether there was a preference for it. I think there was
 an impression that ~~it was~~ ^{it was} offered ~~a~~ a favourable facility
 one that had a standard that would be quite suitable for
 Ontario Hydro, but ~~he isn't~~ ^{he isn't} establishing any formula for pro-
 Canada Square to the exclusion of anyone
 else.

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V.H.

Mr. Shibley: You wouldn't consider that statement, a plug, so to speak, for Canada Square?

Mr. Gathacole: No, I don't look at it that way. I think the game is still wide open.

Mr. Shibley: All right. Then he goes on and he says, "Our own design must now apparently be considered obsolete and have to be written off" and he gives the reasons for that; that there should be major commercial input on the two lower floors, organizational needs ^{have been} changed radically, and ^{he} goes on to ~~mention~~ the ~~redesign~~ redesign of a number of features for longterm efficiency.

On the next page, he goes on: "It will be evidenced from the foregoing that ~~we~~ we are really talking about a negotiated partnership in which the benefits of a favourable location and a very large-scale development are shared. Our plan of attack is to endeavour within the next month to bring to a conclusion our assessment of the type of arrangement achieved by OISE, and based on our examination of that, to attempt to write a specification ^{with broad but} ~~very~~ very clear parameters as to the type of building and type of contract we are looking for. With this we would then approach the market on a highly selective ~~basis~~ basis, that is to say, inviting only those relatively few strong and competitive - I'm sorry, competent - developers who could demonstrate to us that they could provide, and in fact had some record of providing successfully all of the elements of such a contract. It might not be easy to exclude others but I think in fairness to all concerned in ^{terms} ~~terms~~ of the ~~heavy~~ investment of time and money in such proposals we would have to take a strong line on this, especially with anyone with whom we have already had unsatisfactory dealings as tenants ~~in~~ on the commercial leasing market."

Now, again, Mr. Gathacole, you will note the

(Mr. Shibley)

urgency of Mr. Sissons' memorandum, ~~stating~~ ^{discussing} in terms of reaching a conclusion within a month following November 2, 1971. I ask you, were you and the other members of the Commission aware that they had gone this far at that ~~date~~ ^{date}

Mr. Gathercole: We knew the studies - I knew the studies were proceeding and that progress was being made, but ~~was~~ ^{I am} not familiar with the exact details. I wasn't knowledgeable with respect to the exact details of ~~what stages were~~ ^{being undertaken} what was going on. ~~This~~ ^I was an ongoing study, further progress was being made, ~~it~~ ^{thinking} was being crystallized, and they were carrying out the responsibilities which ~~was~~ ^{was} there to do that.

Mr. Shibley: I think the committee must be interested ...

Mr. Gathercole: The Commission was not appraise that this was at that precise stage of the studies, ~~of~~ ^{of} the analysis, ~~of~~ ^{of} the thinking of Mr. Sissons or of that particular group ^{who were} investigating.

~~Mr. Shibley: At this point, I think the Commission should be aware that the Commission is not aware of the exact details of the studies.~~

~~Mr. Shibley: I think the Commission should be aware that the Commission is not aware of the exact details of the studies.~~

H-063 follows

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5:35-5:40 pm

C.B.

Mr. Shibley: At this point in time, Mr. Gathercole, there has^d only been an antente study made of the mod^us operandi of Canada Square, is that not correct?

Mr. Gathercole: That I'm not sure, I couldn't answer as to that, whether ~~there~~ studies had ~~any~~ been made of other buildings. They may well have been. The evidence obviously suggests that there was a very considerable attention being devoted to analysing the OISE model, if I might put it that way. But with a view to using that information in order to assess other possibilities. In other words the competition was certainly wide open, there wasn't any, certainly at any time any decision in the making to go to ~~the~~ Canada Square, but we were using that ~~as~~ as a base for examining other proposals that might be made.

Mr. Shibley: All right. I'm producing to you a further memorandum dated November 4, 1971, from Mr. Dean to the file, ~~as~~ ^{o?} will make ^A exhibit number 24. Now have you considered the content of this memorandum, Mr. Gathercole?

Mr. Gathercole^c: No I have not.

Mr. Shibley: We will leave that for Mr. Dean to comment on when he is a witness. I would like to refer you however to ~~the three~~ the two basic elements that entered his thinking at that time. He asked "that it be definitely established that the present building plans

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C.B.

(Mr. Shibley)

are unsuitable" and, ~~two~~ two, "that you are prepared to accept ~~only~~ the main reasons for only considering ~~and~~ lease-back arrangement which probably imply -

“(a) limiting ourselves in choice of facilities, builders, and so on

“(b) avoiding the real constraint of tenders on the building alone

“(c) possible conflict in the ultimate choice arising from the combination of building, financing and maintenance in one package

“(d) possible public criticism arising out of the limited choice which we would impose on ourselves

And he goes on to say:

“In view of the above, it seems we should set a definite course of action which would minimize the majority of factors.”

We will come back to that.

Mr. Chairman: I am marking it as exhibit 24, even though it hasn't been identified as yet.

Mr. Shibley: Then the next document I wish exhibited is the minute of a meeting of general managers dated November 22, 1971. Have you seen this minute?

Mr. Gathercole: Not except in recent weeks. I wasn't on the distribution list.

Mr. Shibley: Were you advised of the substance of what transpired at the ~~next~~ meeting of which this is the minutes?

Mr. Gathercole: In a general way over time these

(Mr. Gathercole)

~~Mr. Gathercole: I am not sure that the matters~~
would be mentioned to me by Mr. Gordon. But I was not
specifically briefed on the ~~general situation, and~~
the matters that were discussed at this meeting.

Mr. Shibley: I alert you to the content of
paragraph four of the minute, which reads: ~~"The~~
~~appearance of the~~

⁶⁷
H-10-3 to follow

H-6¹¹ - 3

(Mr. Shibley)

transaction?

Mr. Gathercole: Well, I think what it is suggest
is that if you go the least-purchase route, then it is
very difficult to arrive at ^{an} ~~the~~ evaluation and a wide range
of competitive tenders, ^{--that} you must make the evaluation of
each package that you ~~are~~ would obtain. It's not just
a matter of unit prices for a load of gravel, or whatever
it may be; it's a matter of buying a package. But certainly
it would never be the intention to have no competition
among developers for any project that we might undertake.
Although that competition might take different forms. For
instance, in buying some things you have very wide competi
in other areas there are relatively few competitors in the
area, and that's as I assess it. ~~and~~

(Tape H-6¹¹ - 1 follows)

~~(Mr. Gathercole)~~

~~There are relatively few competitors in the area and that's~~
~~enough to~~

Mr. Shibley: Have any of these managers discussed the situation with you about this time, as to whether you could afford the risks inherent in not seeking out alternatives by way of developers for your head office?

Mr. Gathercole: Well, I think it was recognized that there had to be alternatives.

Mr. Shibley: Now, I gather that we are in the process -- using Mr. Bullbrook's terms -- ^{of} this matter "bubbling up". It has now "bubbled up" to Mr. Gordon's level and the next document that I wish ^{to} exhibit is a memorandum prepared by ~~any~~

Mr. Deans: If I may, before you proceed with that ~~any~~

Mr. Chairman: Mr. Deans.

Mr. Deans: Thank you. Why would the general managers ^S be considering whether or not something was reasonable justification for not proceeding with tenders? What reason would they have for even considering whether or not there was reasonable justification for not proceeding with tenders? on a matter of this importance?

Mr. Gathercole: I think that ~~we~~ ^{you} should ask Mr. Gordon that question.

Mr. Deans: I will.

Mr. Gathercole: But if I may just make one observation, it is pretty common-place in the business world for organizations which are engaging in the construction of a large office complex to make arrangements with one developer. We recognize we are a public organization, although many people are urging us to adopt more of the practices and procedures of the business world. But as I have said before, as we get

(Mr. Gathercole)

into the acquisition^{of} the procurement of very sophisticated equipment, you do enter an entirely different field ~~and~~ It involves the elements of negotiation and I could go on and make more extended remarks in that regard. We had a case the other day where a company was suggesting to us that we join with them, because of the technology we have, in a joint enterprise which would run into hundreds of millions of dollars. ~~and~~ I said to them; "Well, why should it be you? We are just in a ^(predicament) ~~predicament~~ at this moment because, ~~we had~~ after looking at a number of proposals, we ^{made} a choice. We thought we were getting the best deal and we made a choice." I said to this group here; "Why should we join you? How do we know we are not going to get ourselves into exactly the same sort of a ~~predicament~~ predicament?" If you get into these areas, it does involve negotiations. When you get into ~~negotiations~~, it involves making a choice.

Mr. Deans: It doesn't appear, though, that ~~that~~ is what happened here. They didn't say; "Why should we involve them?" What they appear to be saying is that ^{we} We have justification for accepting a ~~competent~~ competent developer who has indicated a willingness to work within the framework and, by so doing, avoid the complicated process of soliciting tenders ^{by} which seem to me to indicate that they were perfectly satisfied at that point with the developer that had come forward, and had agreed at least among themselves, that developer was satisfactory. Would that be a reasonable conclusion to draw from that?

Mr. Gathercole: No, I don't believe it was at all.

Mr. Deans: Not reasonable?

Mr. Gathercole: It is borne out by the comment of the general manager that we should compare alternatives, a clear statement of the alternatives open. This was sort of a comment which ^{was} being made by a member ~~of~~ at that time. You know, y

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5:40 - 5:50 pm

AA

A 55 - 3

(Mr. Gutherie)

have a meeting. Somebody suggests one thing. Somebody suggests another thing. You have a lot of these views are on a collision course. In the end you arrive at what is a good common sense approach.



651

73

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5:50 - 6:55 pm.
M.S.

~~Mr. Chairman: Mr. Deans?~~

~~On the subject of the general manager's committee, Mr. Deans?~~

Mr. Rowick: Mr. Chairman; ~~what~~ Mr. Deans is
thought?

Mr. Chairman: Mr. Rowick?

Mr. Rowick: Mr. Chairman, I take it that you
specifically aware of this particular meeting of the general
manager's committee?

Mr. Gathercole: I wasn't, no, but ~~that isn't~~
general manager's committee meets, as I said, invariably
week. They have discussions among their people and, quite
properly, they discuss many things. We have, in our organizational
studies which are ongoing, with respect to nuclear power
designs in thermal generation, transmission line facilities
don't know what that is. Even, in many cases I suppose the
general manager doesn't. And these flow up, and quite properly
flow up to the general manager's committee and then they go
sort of a recommendation stage and they come to the Commission.

Mr. Rowick: Mr. Chairman, I just was checking
yesterday's testimony of Mr. Gathercole, and he ~~referred~~
Gathercole referred yesterday to the date on which you met
Mr. Moog. And that date, in the transcript, is November
~~22, 1971~~ Mr. Gathercole, would you indicate to the commission
whether this was just a coincidence that you met with Mr.
on November 22, 1971, the same date that this meeting was
place of the general manager? And what would be the reason
would prompt you to have your meeting with Mr. Moog on

Mr. Gathercole: Well, it would be sheer coincidence.
I didn't even know this meeting would be going on. Our
had been up to look at Canada Square and so I asked Mr.
on some occasion, that he would bring Mr. Moog in and
him. But you find that the next week I also met with
of Miller and Rosenberg. And also met a number of the

Mr. Gathercole)

mean, there isn't anything unique about it.

Mr. Renwick: Well, Mr. Gathercole, the course of the submission to you of these various exhibits elicited in each occasion the statement that you weren't aware of the progress which was being made in the decision-making steps being taken by ~~the~~ your organization, which were gathering momentum, on the question of a lease-back. You have indicated that you were not aware of any of these memoranda. And, Mr. Gathercole, as I take your response to Mr. Bullbrook and Mr. Deans, there aren't any other ~~more~~ memoranda. Could you specifically explain how you came to meet Mr. Moog on November 22, 1971? Who arranged the appointment? Where the appointment took place and who was with you, and what was the substance of your discussion with Mr. Moog on that ~~thatsame~~ occasion?

Mr. Gathercole: Mr. Renwick, may I just clarify one thing. I was aware of the studies going on, I've said that. I don't think there's any ~~is~~ question about that. I've said I was aware of the studies that were going on to explore the means by which we would ultimately realize a head office. I said I wasn't aware of the form ~~of~~ the studies were taking, ~~but~~ I was aware that studies were going on, that progress was being made. Which is somewhat different from your interpretation that I was completely in the dark about it. I knew the studies were going on. Now, as to the circumstances of Mr. Moog, I ~~had~~ never met Mr. Moog, I'd never even heard of Canada Square before. Mr. Candy had had two or three meetings with him. So I suggested to Mr. Candy that sometime in the future, if he could do it, well, he might bring Mr. Moog into my office. And that was all until we met for about ~~five~~ five or ten minutes one morning, I think it was, on November 22nd and we.....

Page H 66 follows

(Mr. Gathercole)

~~and then he said, "I had a discussion with Mr. Rosenberg, and the other associates, Yotles and Rosenberg, I think it was two weeks or 10 days later -- and other people."~~
~~and then he said, "I had a discussion with Mr. Rosenberg, and the other associates, Yotles and Rosenberg, I think it was two weeks or 10 days later -- and other people."~~
 had a discussion. At this time some other enquiries were coming in, and then ^{I met} Mr. Rosenberg, and the other associates, Yotles and Rosenberg, I think it was two weeks or 10 days later -- and other people.

Mr. Renwick: Mr. --

Mr. Gathercole: Subject of the discussion -- nothing.

Renwick:

Mr. Gathercole: Mr. Gathercole, would you seriously reconsider the answer which you made to a question a few moments ago by counsel as to whether or not you could identify the one competent developer at November 22, 1971, who had indicated a willingness to work within a framework incorporating some considerable part of the previous architectural design work?

Mr. Gathercole: No, I won't reconsider that.

I don't know who the developer was.

Mr. Renwick: Mr. Gathercole, who --

Mr. Gathercole: I will acknowledge, as I acknowledged before, ~~that~~ ^S that Canada Square was building ⁱⁿ ~~the~~ building was being used as a study base; that is true, but, and maybe that is the reference in here; but that I don't know. Those are not my words. You are asking me ~~to~~ ^{if} is that the developer, ~~that~~ ^S I can't say that, because I have no justification for doing so.

Mr. Renwick: As I understand it, Mr. Gathercole, Mr. Candy made the arrangements for Mr. Hoag to come to your office.

Mr. Gathercole: That's right.

Mr. Renwick: And Mr. Candy, did he advise you at the time that Mr. Hoag was coming?

Mr. Gathercole: Yes, I believe he did.

Mr. Renwick: And was Mr. Candy with you when Mr. Hoag came?

Mr. Gathercole: Yes.

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B.A.

Mr. Renwick: And was there anyone else present

at that time?

Mr. Gathercole: No, I don't think there was.

Mr. Renwick: And ^{that} ~~was~~ was the discussion about

on that occasion?

Mr. Gathercole: It wasn't anything, it was just -

I said I would like to meet him and that was all.

Mr. R. G. Hodgson: Was that before or after the

general manager's committee meeting on that day?

Mr. Gathercole: That would have been ~~as~~ before.

The general manager's committee meeting ^{was} ~~as~~ in the morning, I
take it they are both the same date. That is a co-incidence ^{you ARE DARNING}
General manager's committee meetings are invariably in the
afternoon, and my meeting as I recall it was in the morning.
I think that is correct.

Mr. Chairman: Any other questions on this point?

Mr. Bullbrook: Are you finished, Mr. Renwick?

Mr. Renwick: Yes.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: Well, it is not my intention to

cross-examine, but I wouldn't expect, sir, that you would recall
the detailed discussion that took place between yourself and
Mr. Moog on that occasion, but when you say that there was no
discussion, when you use the phrase, "nothing" in response to
Mr. Renwick, since Mr. Gandy was there, was there not some, at
least, inference, that involved building of some kind?

Mr. Gathercole: No, there was not at all. There

was absolutely nothing. The only - it was just a case of I had
never met the gentleman, and when he came I just said, "Hello"
and we talked about some general things; I didn't say anything
about a building or anything like it.

Mr. Bullbrook: Could you help us, to the best of your recollection?

Mr. Gathercole: I am helping you, and I am being quite sincere on that.

Mr. Bullbrook: I, at no time, impugn your sincerity, Mr. Gathercole, I want you to understand that, but, if you recall at all what you discussed - was it about go-

Mr. Gathercole: It was just general remarks, I don't think we were there for more than ^{a few} ~~some~~ minutes, and I said, "I just wanted to meet you" and that was all.

Mr. Drans: I ^{were} ~~was~~ aware of why Mr. Moog was in the building? Did he come down strictly to drop in and say, "Hello"?

Mr. Gathercole: I suggested to Mr. Candy that I would like to meet the gentleman who had built, or ways of financing, carried out the construction of OISE; and that was the reason for it. It ^{was} ~~had~~ just ~~been~~ arranged, and took place in a very few minutes, and that was it. There was nothing said about building or anything of the kind.

Mr. Shibley: Perhaps the question might be, why were you interested in ^{meeting} ~~Mr. Moog~~?

Mr. Gathercole: Well, I looked at the OISE development as a possibility, but I also looked at others as a possibility, as I mentioned in the next - there were a number of people who were waiting in. for instance. ~~Mr. Pigott was one.~~ Mr. Pigott was one. He happened to be, I hope, anyway, still friend of mine, and there were other people. Yelkes and Potemkin were interested in having a little talk ^{and} ~~and~~ I wanted to ~~just~~ ~~talk to them~~.

(Tape H - 67 follows)

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V.H.

(Mr. Gathercole)

~~group were interested in having a little talk and I wanted~~
 to just ^{quick} ~~show~~ them a little bit ^{about who are} ~~and~~ these people in
 the ~~development~~ ^{development} field?"

Mr. R. G. Hogson: Would it be possible, Mr. Gathercole, ---

Mr. Gathercole: Without getting enmeshed, if I might say that, in any detail that ^I had nothing to do with.

Mr. R. G. Hogson: Would it be possible that any reference would have been made as to Mr. Moog being a friend of Mr. Davis or ^{to the} a friendly relationship between the two?

Mr. Gathercole: None whatsoever. At that time I didn't know anything about friendship, Moog ^{by} the Premier, or anything like that.

Mr. Chairman: Mr. Shibley, we would like to carry ~~away~~ on for a few minutes - I know its six o'clock, but there are one or two more documents I think that Mr. Shibley would like to get in this evening.

Mr. Shibley: I only have one remaining document on this series of events, if I might complete the record. I would like to produce to Mr. Gathercole a confidential memorandum dated November ~~24~~ 25, 1971, which appears to have been received in your office on ~~November~~ the 26th of that month, from Mr. Sissons and there's a handwritten note at the top left corner: "Mr. Gathercole, As discussed, we will stand ready for a meeting" and it looks like Mr. Sissons' initials. It is styled: "Notes re Logistics of Head Office Project". May we have that made exhibit 26.

Mr. Chairman: Correct.

~~Mr. Shibley:~~

Mr. Shibley: Mr. Gathercole, I am presuming that this was a memorandum received by you - is that correct?

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~~It was~~
Mr. Gathercole: Sort of an academic piece.

Mr. Shibley: Well, we'll see. It starts out:

~~"The basic factors to be taken into account are~~
as follows:

1. We need to finance without apparent interference with power program financing.
2. We need to move ahead ^a quickly...
3. We need to move ahead on a basis which will not attract unnecessary mistrust and criticism, etc."

I will skip four, five and six, and I would like to get to page 2, second paragraph, which is an interesting thing for the committee.

"On all of these grounds it appears as though our best interests would be served if we find the right type of lease back partner. Because of item 6, it seems virtually impossible to solicit proposal developers at large, or even from a select group of three or four in whom we would have reasonable confidence. I think we are in the position of having to select the developer in whom we have complete confidence, and to support this decision by the fact that we have received so favourable a rate of financing from him" ~~xxxxxx~~

I ask you to note the word "him".

"And so favourable an end rental that we chose him to participate with the original architects in the redesign and the construction of the building. As we have had a number of prominent developers asking to be allowed to participate I think we should talk to them ~~via~~ in general terms about financing, probable rental and other pertinent factors. We are initially favourable

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impressed with the result achieved at GISE in terms of the type of building, the apparent flexibility of the construction arrangements, and the very favourable leasing and maintenance rate. If we conclude that this is the course to follow, the fact that the same developer had had both jobs might involve an additional point of criticism for both ourselves and the ~~the~~ government for which we should be prepared."

Now then, just dealing with that paragraph, Mr. Gathercole, I gather at this date - being November 26 - *on which* ~~the date~~ you received this memorandum in your office, ~~was~~

H-068 follows

(Mr. Shibley)

~~that at that time, you were then~~
~~that~~
 alerted to the circumstance, first, a leaseback arrangement
 was being recommended by your managers. Is that correct?

Mr. Gathercole: Yes, that's ... yes.

Mr. Shibley: And that your managers had decided
 that you should select the developer in whom you had complete
 confidence. Is that correct?

Mr. Gathercole: To select from a group of
 developers the ones in which we have confidence.

Mr. Shibley: Now, what then is meant by the
 reference in this paragraph, ⁵⁷ and to support this decision
 by the fact that we have received so favourable a rate
 of financing from him, and so favourable an end rental ⁸ that
 we chose to participate with the original architects in
 the redesign and construction of the ² building. ⁹³

Was there, then, a selection in the sense of
 identifying the developer who was to do your head office
 building?

Mr. Gathercole: Not that I ~~have~~ ² have any

Mr. Shibley: And then, to go on thereafter, so

Mr. Gathercole: The field is completely open,
 indeed, was ~~was~~ ² for the next several months.

Mr. Shibley: Well, are you telling the committee
 then that the reference to "a favourable rate of financing
 from him" ⁹³ means "him" ⁹³ whomsoever he may turn out to
 be, or "him" as meaning some person within their thinking?

Mr. Gathercole: That I am not able to ~~answ~~ ⁹³ answer
 it's not my job....

Mr. Shibley: Well, you had discussions ⁹³ with
 at that time, with Mr. Sissons, according to the memorandum
 did you not?

Mr. Gathercole: Yes, we had some discussions ab
 is, but ...

Mr. Shibley: And were part of those discussions the identification of that developer that was considered the developer from whom you had received a favourable rate of ~~financing~~ financing, and so on?

Mr. Gathercole: Well, I don't understand that; I don't know what it means by having received a favourable rate of financing.

Mr. Shibley: Well, that's what I am asking you. This is a memorandum to you. What did you understand the memorandum to mean when you received it?

Mr. Gathercole: Well, as I said, it comes under the title, "notes re. logistics of head office project", and I viewed it as sort of, you know, talking-out-loud type of a document. That's how I viewed it. And that's how I still view it, as if somebody was just thinking out loud about, you know, what course there may be, what possibilities there may be, what things ought to be taken into consideration, and so on.

Mr. Shibley: Well, what I want to know for the benefit of this committee, Mr. Gathercole, is when that wording was employed, was it intended to mean, and did you understand it to mean, that your managers had already selected a person to be the developer, or was it ~~intended~~ intended to mean and did you understand it to mean that whoever it should be, the developer should be the person from whom you had received a favourable rate of financing?

Mr. Gathercole: No, none whatsoever. ~~We hadn't~~ We hadn't received any favourable rate of financing of which I have any knowledge. ~~There was no intention~~

Mr. Shibley: I see.

Mr. Gathercole: The answer to that, ~~as~~ as you quote it, is emphatically, no.

Mr. Shibley: Well, with the tense that is employed, and to support this decision ~~by~~ by the fact that ~~he~~ ^{we} have received ^{so} favourable ~~rate of financing~~ financing from him, as

(Mr. Shibley)

though it were an accomplished fact.

Mr. Gathercole: There was nothing accomplished ..

Mr. Shibley: I see.

Mr. Gathercole: .. of which; I mean, I don't understand; there was nothing accomplished; there is no rate ~~of~~ of financing.

Mr. Shibley: Well, reading it in context, the next sentence ^{is} "As we have had ~~and~~ a number of prominent developers asking to be allowed to participate, I think we should talk ~~to~~ to them in general terms about financing, probable rental and other pertinent factors."

Now, what interpretation do you put on that?

Mr. Gathercole: Well, the interpretation I would take to put on that ~~is~~ ^{that} should begin to take up discussion with a number of other -- if we ~~had~~ hadn't before -- a number of other developers.

Mr. Deans: Would you tie that back in to the opening sentence?

Shibley?

Mr. Gathercole: Yes.

Mr. Deans: The one in regard to "it seems virtually impossible to solicit proposals"?

Gathercole:

Mr. ~~Gathercole~~ Yes.

Shibley?

Mr. ~~Gathercole~~ It goes on ...

Gathercole:

Mr. ~~Gathercole~~ Yes.

Shibley:

Mr. ~~Gathercole~~ It goes back because of item six, and item six is a reference to; ~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

~~the latter point and to~~

Mr. Shibley:

we are in a very difficult position, both to meet the latter point and incorporate other improvements and because we should now redevelop the site to its full potential all in one stage of not being able to use the completed architectural plans which were put on the shelf in 1970, but rather must salvage from these the ^{public} ~~maximum~~ possible re-design value. On all these grounds it appears as though our best interests would be served if we would find the right type of lease-back partner. Because of item 6 ^{it} ~~which~~ seems virtually impossible to solicit proposals from developers at large ^{and I am} ~~and just~~ ^{transferring} ~~and just~~ ^{it} seems virtually impossible ~~even~~ to solicit proposals from even a select group of three or four in whom we have reasonable confidence. I think the position of having a to a select the developer in whom we have complete confidence and to support the ^{decision} ~~decision~~ etc., all ~~as far~~ ^{as far} I have read to you. Now Mr. Gathercole, this memorandum was the ~~real~~ subject of some discussion between yourself and other of your managers was it not?

Mr. Gathercole: I can't exactly recall ^{if it was} ~~but~~ ^{being} ~~but~~

~~There~~ no doubt it was referred to me ^{as being} ~~as being~~ a summary of a ^{thinking on the subject in their business, but even in that} ~~I had insisted that even in that~~ there are a number of contradictory things. ^{For instance,} you ~~pointed out~~ ^{pointed out} to us that ^{if we could consider} ~~if we could consider~~ the course that we should follow, even though OISE ^{imposed Hydro there might be some} ~~imposed Hydro there might be some~~ additional ^{benefits} ~~benefits~~ for both ourselves and the government for which we should be prepared. I mean ^{it} ~~that~~ is not an open and shut case ^{for all} ~~for all~~ where they are suggesting that OISE looks pretty good as I understand it, this is my interpretation, ^{but} ~~but~~ we need to ~~transformation~~ have other competitive tendering for ~~it~~

Mr. Chairman: Mr. Bullock, you have a question?

Mr. Bullock: Mr. Beane had ~~just~~ taken up the point that I wanted to ~~ask~~ ^{whether} ~~ask~~ was going to purchase and ^{and} ~~I~~ wanted to ask you and you had ~~been~~ asked, ~~but~~ it seems to me ^{that} ~~that~~ the second ~~question~~ ^{second} paragraph on page 2 ~~leads me to the~~ ^{leads me to the} ~~discussion~~ ^{discussion} as

(Mr. Bullbrook)

I will phrase this in a
~~possible~~ ^A statement form and ask you to comment.

As I read that paragraph in total context, and especially that ^{the} second sentence ^{it} it says,

"It seems virtually impossible to solicit proposals from developers at large, or even from a select group of three or four, ^{if} ~~there~~ there had been a discussion that arrived at a conclusion that there were going to be specific ~~negotiations~~ negotiations with one particular developer, and that is not correct."

Mr. Gathercole: No, that is not correct.

Mr. Bullbrook: Could you explain to me what was meant by the phrase, "and I think you should talk to them in general ~~the~~ terms about the financing." What is the significance of the word general?

Mr. ~~Gathercole~~ Gathercole: That I don't know.

Mr. Bullbrook: Going down to the second last paragraph, it refers to the possibly of keeping some type ^{tenancy} ~~tenancy~~ in the developer's ^{MENT} ~~area~~ downtown. It reads, the sentence thereof:

"While this might reduce our exposure to public criticism in the areas cited above, and ~~it~~ would be quite feasible in other respects and no doubt popular enough ^{with the staff} ~~that~~ (audible) there is no ~~other~~ other rationale for abandoning our own re-development plan, ^{if} ~~at~~ we can negotiate acceptable terms."

Do I take it from that, Sir, that the discussions that you had of which this is a memorandum, that the intention to operate on a lease-back basis at that time had been concluded as far as we were concerned?

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(Mr. Bullbrook)

Subject only to the approval of the full Commission?

Mr. GATHER: No I wouldn't agree to that.

I would say that ^{while} there was a good deal of ^{crystallization of thinking} speculation on the lease-back and we were getting increasing evidence that because of rising capital expenditures that we should give ^{the} ~~the~~ lease to ^{our} ~~a~~ conventional source of money in this regard, that ~~there~~ lease-purchase arrangement whereby someone else put up the money for the building was more attractive and was becoming increasingly attractive, but as I have tried to say before, there is no one place where you pull down the curtain and this was ~~extending this~~ ^{November} date of business, ~~to the~~ 25th, ~~it~~ could extend into the next year, in my thinking as I contemplated ^{it}, Not necessarily to other ~~people~~ people, you know, organizations I suppose of people ~~have~~ have different views.

Mr. Bullbrook: One final question if I might, recognizing that the majority of the memoranda placed before you were not directed to you and recognizing ~~that~~ therefore that this is one of the first ones ^{that relate to} ~~involving~~ discussions of which you have first-hand knowledge, in connection with the first paragraph that refers to ~~being able to~~ ^{being able to} use the completed architectural plans which ~~we~~ were put on the shelf in 1970, but rather must salvage from these the fullest possible re-design value, ^{so} in your discussion, of which this forms a memorandum, ^{at the top} was there any discussion that any developer had had the opportunity of ^{self, wanting} ~~according~~ himself, or itself, with your plans completed in 1969?

(Mr. Bullbrook)

~~Mr. Bullbrook: The information that I have from~~
~~Mr. Candy is that the plans were available to various~~
~~contractors or developers, but Mr. Candy is more conversant~~
~~with that than I am, I don't know.~~

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Chairman, I would just like to pursue a little bit the same point that Mr. Bullbrook was dealing with. In the minutes of the general managers' meeting, ~~the~~ exhibit number 25 on November 22nd, 1971, it specifically states in those minutes that "one competent developer has already indicated a willingness to work within the framework ~~of~~ incorporating some considerable part of the architectural design work which was previously ~~shelved~~ shelved." And in this memorandum, being exhibit number 26, as Mr. Bullbrook ~~has~~ has pointed out, there is the specific statement that "because of item ~~five~~ six, it seems virtually impossible to solicit proposals from developers at large, or even from a select group of three or four in whom we would have reasonable confidence." And ~~the~~ item six, if I may just ~~crystallize~~ crystallize it, ~~it~~ states clearly, "We are in the ~~very~~ difficult position of not being able to use the complete architectural plans which were put on the shelf in 1970, but rather must salvage from these the fullest possible redesigned value."

Now, having ~~regard~~ regard to the evidence yesterday, that in August of 1971, the plans were made available, insofar as we know at this point, exclusively to Canada Square, ~~that~~

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AA

(Mr. Renwick)

Then is it not a fair statement, reading this document, for one to draw the conclusion that the developer that had the plans was the developer referred to in the next sentence of the paragraph on page two of exhibit number 26; "I think we are in a position of having to select the developer in whom to have complete confidence and to support this decision by the fact that we have received so favourable a rate of financing from ² ~~3~~?"

Now, aren't we logically, Mr. Gathercole, inexorably driven to the conclusion that the developer referred to in that paragraph on page two of exhibit 26 is Canada Square?

Mr. Gathercole: I presume that that is the case because they had been working, but let me say this that it didn't mean that Canada Square had an exclusive track on this. It didn't mean that there weren't other developers, other builders. The field was still wide open.

Mr. Renwick: Mr. Chairman, if I may just indicate by way of question to Mr. Gathercole, the discussions, according to this memorandum, with a number of other developers were to be in general terms about financing, ² ~~3~~ ^{probably} rental and other pertinent factors. Would discussions in such general terms enable a number of other prominent developers to provide the kind of information that would permit a comparable choice amongst those who are being given, apparently at some later time, the opportunity to submit proposals?

Mr. Gathercole: These were words that were employed in very loose way. There is no question² about that, ~~but~~ I think you are reading too much into this. ~~There is no question about that, but I think you are reading too much into this.~~

S. 72 - 1 follows

(Chairman: Mr. MacBeth)

(Mr. Gatherscole)

...You're reading that wrong into this. Certainly other builders and developers had an opportunity to participate.

Mr. Renwick: All right. I have no further questions Mr. Chairman, at this time.

Mr. Chairman: Any other questions of any member of the committee?

Mr. Genest: Mr. Chairman, having restrained myself ^{Submission to} ~~to~~ ^{to} this long I have a ~~statement~~ ^{statement} to the committee. ~~Make~~ my respectful submission to the committee that the type of question to which this witness has been put latterly is most unfair. I ~~want~~ want to register this objection to the committee. I submit respectfully that it is unfair and really not very helpful in the longrun to ask ^a ~~the~~ witness, who is ~~a~~ not the author of a document, to go on telling the committee what interpretation - what this means and what that means. The proper person, in my respectful submission, to whom you address questions of that kind is the author of the document in question who is going to be in this witness stand very shortly. I do submit most strongly that it is unfair to subject Mr. Gatherscole to this type of questioning.

Mr. Chairman: I appreciate that Mr. Genest. I've been listening to it and ~~a~~ I have noted that some of the exhibits were not properly ~~and~~ identified and I was doing that for that very reason.

Mr. Bullbrook: Well, we're ^{just} not going to leave it at that.

Mr. Renwick: Mr. Chairman, let's just be perfectly clear. This was a document delivered to the Chairman of the Ontario Hydro. It's perfectly clear on the face of it. I think the questioning is quite proper to ask the receiver of that document ^a ~~delivered~~ to him what that document meant to him, and that was the purpose of the questioning which was involved.

Mr. Chairman: Well, you and Mr. Bullbrook both ~~are~~ ^{are} off a little bit quickly.

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fvk

Mr. Bulbrook: I'm sorry.

Mr. Ronick: I'm sorry.

Mr. Chairman: I was going to go on and say that I think the questions were leading to what Mr. Gathercole thought or what his sort of thing could mean.

Mr. Gathercole: Can I make one point, Mr. Chairman?

Mr. Bulbrook: No, I want to, before you make a point, want to make a point in reply to your counsel. I want to be quite clear in this respect. Counsel for Hydro regarded the ^a latter inquiries of committee members as ~~being~~ "unfair". Those were his words. I want to tell you, sir, that we could have been much more unfair today, and in the past, to this witness. I have restrained myself considerably in connection with a function that we can perform, and that is the function of cross-examination and make no mistake about that at all!

Mr. Chairman: All right. Mr. Gathercole.

Mr. Gathercole: I was just going to ~~make the~~ ^{make the} point, Mr. Chairman, that this note was not addressed to me but it was rather a note re logistics ^{of} ~~and~~ head office projects. It was sort of a filing note which was passed down ~~and~~ ^{to} me for reading.

Mr. Bulbrook: Well, we should also record that at the top of that it says: "Mr. Gathercole, ~~As~~ ^{as} discussed we will stand ready for a meeting," and the initials ~~of~~ ^{as} ~~the~~ ^{the} counsel has brought to ~~your~~ ^{your} attention.

Mr. G. Gathercole: That is right.

Mr. Chairman: All right. It's now almost 6:30. I'm sorry we've gone on so late. ~~however~~ ^{we stand} adjourned until 3 p.m. tomorrow afternoon.

Committee adjourned at 6:25 o'clock, p.m.

Exhibit 14. Memo - July 13, 1971

R.S. Cameron to J.B. Smith

15. Letter - June 24, 1971

W.P. Pigott to G.E. Gathercole

16. Letter - July 20, 1971

G.E. Gathercole to W.P. Pigott

17. Memo - July 26, 1971

R.S. Cameron to J.B. Smith

18. Memo - August 18, 1971

J.O. Dean to J.B. Smith

19. Memo - October 6, 1971

R.S. Cameron to J.O. Dean

20. Memo - October 21, 1971

J.O. Dean to H.J. Sissons

21. Memo - October 26, 1971

H.J. Sissons to J.O. Dean

22. File Memo - November 1, 1971

From J.O. Dean

23. Memo - November 2, 1971

H.J. Sissons to D.J. Gordon

24. File Memo - November 4, 1971

Re "Administration Building"

25. Minutes of General Manager's Committee

Meeting - November 22, 1971

26. Memo - November 25, 1971

From H.J. Sissons re "Logistics of
Head Office Project"

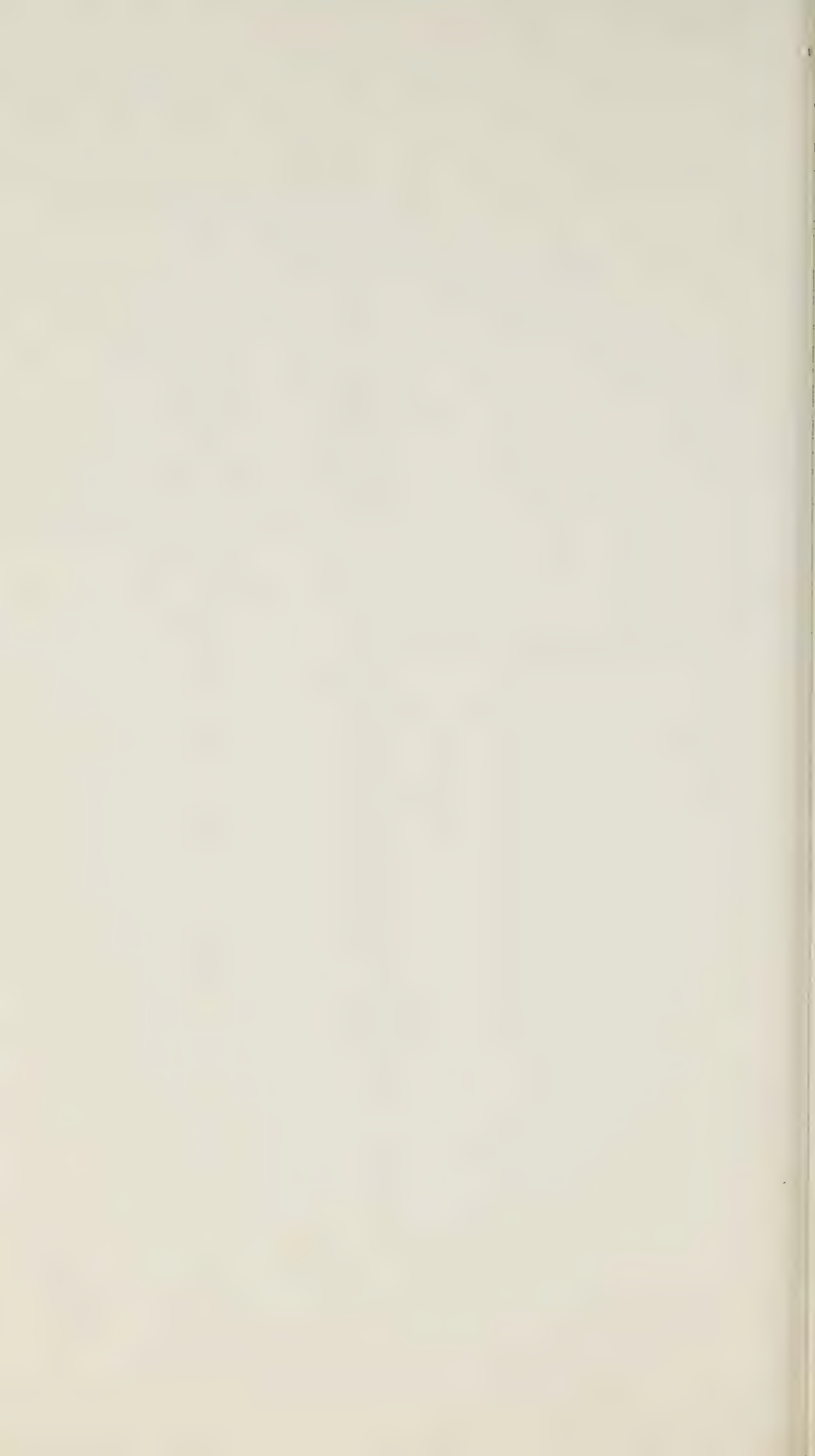
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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, May 24, 1973.

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May 24/73
3.10-3.15 p.m.
E.M.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 3.10 o'clock, p.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I will call the meeting to order.

I want to just get the committee's thoughts in regard to our meeting times next week. I understand, in talking to Mr. Shibley, that he expects that Mr. Gathercole will be involved all during today's hearing, but next week I would propose that we meet Tuesday at three, Wednesday at 10 until perhaps 12 or one, probably one; and then come back at maybe 2:30 and go on until six; and Thursday again at three o'clock. That would leave both Monday and Friday without a meeting. Is that agreeable to the committee?

Mr. Gaunt: I would suggest from 10 to 12 and two to six.

Mr. Chairman: All right, on Wednesday you prefer 10 to 12 and two to six. All right.

Mr. R. G. Hodgson: Is there any chance the House is going to sit?

Mr. Deans: Yes.

Mr. Chairman: Well, that is on the basis the House will not be sitting. If the House sits, then, of course, we will carry on at the three o'clock hour.

Mr. Bullbrook: I think we should clarify that. Even if the House sits, I know we can't be available during the question period, whenever that will be, but I would like to see us sit concurrently with the House too.

Mr. Deans: Well, Mr. Chairman, if I may, my under-

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
Clerk of the committee:	Paul Moore
Committee counsel:	N.E. Shibley, QC
Ontario Hydro counsel:	Pierre Genest
	James McCallum
Canada Square Counsel:	Douglas Laidlaw
Chairman, Ontario Hydro:	George E. Gathercole
Assistant General Manager-Finance:	Milan Nastich

List of exhibits introduced during this sitting appears on last page



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(Mr. Deans)

standing is that the House will be sitting ^{this} ~~on~~ Wednesday; that it was the intention of the government to sit this Wednesday, but because of the conference in Ottawa they changed their mind. And from what I have been told, they will be sitting ~~starting~~ ^(starting) Wednesdays ^{starting} next week. I would assume we would just continue then as we now sit, Tuesday; Wednesday, Thursday ~~on~~

Mr. Bullbrook: Do you see any objection to sitting Wednesday morning? Because our reticence before was because we had other ~~committees~~ committees going on. But it seems obvious now that ~~the House is~~ ^{we are} going to be a long time on this, ~~and~~ and I think you should really consider Wednesday morning.

Mr. Chairman: Mr. Allan?

Mr. Allan: There is a committee called the public accounts committee that meets Tuesdays and Thursdays at 12:30 ^{until} ~~too~~. I hope you will keep that in mind.

Mr. Chairman: ^{We'll} ~~we~~ keep that in mind, all right. Now, Wednesday, of course, ~~would~~ ^{we} set aside for private bills, and there are no private bills now, so that ~~that~~ would open up Wednesday morning. Even if the House does meet, let us plan to meet immediately after the question period. If the House doesn't meet, then we'll commence at 10. If it meets, we will commence at 11 and maybe go on until 12 or so.

Mr. Deans: The Legislature won't meet in the morning.

Mr. Chairman: No, it won't meet in the morning anyway, not Wednesday morning. We will meet at 10 o'clock on Wednesday morning and we may have to not carry on until three o'clock on Wednesday.

With all that confusion, I am certain everybody is clear.

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Mr. Genest: No, I am not.

Mr. Chairman: Not clear?

Mr. Genest: No.

Mr. Chairman: All right, let's review it. We

meet Tuesday at three and Thursday at three. If the House meets on Wednesday afternoon, we will in any event meet Wednesday morning at 10 and go till 12; and if the House does meet, we won't start again until three. If the House doesn't meet, we'll start at two.

Mr. Genest: Mr. Chairman, there was some discussion about evening sittings.

Mr. Chairman: No, I don't think we'll have any evening sittings this coming week. Now what we do after that, we'll have to decide next Thursday.

Mr. Genest: Mr. Chairman, before you start the formal proceedings, I wonder if I might just say one or two words about an objection that I made late yesterday, that I think maybe was misunderstood, in particular by Mr. Renwick.

Mr. Chairman: I'll assume the committee is agreeable to hearing you, sir. Proceed.

Mr. Genest: Thank you. No, I just wanted to make the position clear. What I was objecting to was not in particular the line of questioning that Mr. Renwick was putting to Mr. Gathercole when he was asking Mr. Gathercole to tell the committee what he took from ^a ~~the~~ message that was addressed to him. My objection was restricted to questions which are asked of a witness to interpret a document that was not addressed to him, and to give his ~~interpretation~~ interpretation of the meaning of that document ^{to} ~~to~~ the committee. I don't think it is of any help. The author of the document itself can, of course,

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(Mr. Genest)

~~can~~ explain it, and subject to that ^{an} ~~the~~ interpretation is taken from the words used in the question in the committee; and it is not helpful, in my submission, to have a person who didn't write it, and to whom it wasn't addressed, ~~the~~ interpret *it to my* objection *was restricted to that*
Mr. Chairman: In other words, the document speaks for itself unless you ask for the person who wrote it or the person who received it.

Mr. Genest: That is the position I took.

(Tape H-74 follows)

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Mr. Renwick: Mr. Chairman, just one minor question:

On the question of these exhibits, are you, Mr. Chairman, ~~or~~ or is counsel keeping a record of those that we have in fact been formally admitted? I assume we are introducing these exhibits subject to proper ---

Mr. Chairman: Identification later on.

Mr. Renwick: --- identification. I just want to make certain that in the course of the proceedings we don't lose sight of the fact that some of those documents are not properly identified as yet.

Mr. Chairman: I believe I have noted that every time ~~that~~ we have entered one that wasn't properly identified. I will continue to do so and I think Hansard picks that up. But I have in my own personal notes made a note that it wasn't properly identified, But I think there won't be any problems.

Mr. Renwick: I understand that, it is just a question of doing it so the record is clear.

Mr. Chairman: We are doing it later on so that it is proper.

Mr. Genest: Mr. Chairman, perhaps I could be of assistance to the committee in that regard. Most of the documents that have been produced, and I think the bulk of those which will be produced, come from Hydro files, and ~~and~~ certainly as far as Hydro is concerned when we have given a document to Mr. Shibley it is a genuine document, and Mr. Shibley's statement that it has been taken from Hydro files as far as we are concerned is sufficient proof of that document, without requiring in every case that the witness who wrote it be called ^{because} his evidence is not ~~otherwise relevant~~ ^{otherwise relevant}.

Mr. Renwick: If a more informal way of identifying

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(Mr. Renwick)

documents could be achieved, that is all to the good.

Mr. Chairman: That's help ~~ful~~ ~~where~~ I assume then

if any document is produced which you question, you will certainly
~~it~~ let us know.

Mr. Genest: Yes. ~~(something)~~

Mr. Chairman: All right. Mr. Shibley, back to
you, sir.

Mr. Shibley: May we have Mr. Gathercole back?

Mr. Chairman: Yes, I am sorry, Mr. Gathercole,
if you will come forward again. And I would propose to break
as we did yesterday at our last hearing, and again I would remind
you that you have been sworn on the first occasion.

Mr. Shibley: Mr. Chairman, counsel to Hydro has
asked me to tender for exhibit certain memoranda which the
Chairman has issued under date of May 23, 1973 as follows:
They are all to the same effect, referable to the production of
documents, ~~and~~ I am not going to deal with them in any detail,
but there was a memorandum issued to all commissioners, Mr.
E. B. Easson, "Please examine your files for any documents,
correspondence, etc. . . . Any such material will have to be
made available to the Select Committee appointed to examine and
review . . . should be delivered to Mr. Durand, who is responsible
to Mr. Gordon for the assembly and co-ordination of this
information". Make that the next exhibit, please.

Mr. Chairman: That is Exhibit 27.

Mr. Shibley: Then a similar directive from
Mr. Gathercole dated May 23, 1973 to Mr. Gordon, general manager,
"In my testimony before the Select Committee of the Legislature
yesterday, I was asked by Mr. Shibley to check again for ~~any~~
material which we may have concerning the consideration by the

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(Mr. Shibley)

Commission or its staff on a lease-purchase arrangement . . .
please undertake this examination of our records and files. . .
Mr. Shibley observed there seemed to be a dearth of such material
during the period in question and I would be pleased to receive
your comments. . ."

Mr. Chairman: Exhibit 28.

Mr. Shibley: Then another directive dated May 23,
1973, from Mr. Gathercole to the general manager, Mr. Gordon:

" This will confirm my oral instructions
given to you on April 30th that all files and
records, including all documents, correspondence,
etc.. . . in any way pertaining to the agreement
. . . be gathered together in order that they may
be made available to the Select Committee . . .

"Please ensure that this instruction has been
fully carried out".

Mr. Chairman: Exhibit No. 29.

Mr. Shibley: Then, finally, a further directive of
May 23, 1973, directed to the Secretary, Chief Engineer, Assistant
General Managers, Executive Directors, Directors, Regional
Managers and Managers (6). This is a memo from Mr. Gordon,
general manager:

" In order to ensure that all of the
documents, correspondence, minutes, memoranda,
notes and other papers belonging to the Commission
and in any way pertaining to the agreement for
the construction of our new head office building
have been gathered together so that they may be
made available to the Select Committee ~~which~~
which is examining this matter, would you please



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(Mr.Shibley)

"cause a review to be made forthwith of your Branch or Divisional records and files for all such material and deliver the same to Mr. Durand who is responsible ~~to~~ to me for the assembly and co-ordination of this information".

I did not receive a dozen copies of these ~~as~~ ^{but} I

don't think it is necessary to distribute them. Members of the committee might make a note, however, that there is a void in ~~you and~~ ^{their} exhibit books of those exhibit numbers and that they simply relate to the directives that have been introduced.


Mr. Chairman: The last one is Exhibit No.30 and if anybody wishes to see them, they are here. If you speak with any authority, Mr. Gathercole, that should do the trick.

Mr. Gathercole: I would think so.

Mr. Chairman: Does that satisfy you, Mr. Renwick?

Mr. Renwick: Yes, Mr. Chairman.

Mr. Shibley: I would like to again express my appreciation for the efforts of Hydro in collating some of this information for us. ~~I might say that they have also been working very hard~~



(Tape H-75 follows)

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~~appreciation for the efforts of Hydro in collating some of this information for us~~, I might say that they have also been working very hard to provide an indexing for some of the documents; and we ~~are~~ are, I think on both sides, burning the midnight oil to present the whole of the material to you.

Mr. Bullbrook: Mr. Shibley, may I ask you a question? Do you feel you have sufficient staff available to you to undertake your obligations?

Mr. Shibley: Yes I do. The only deficiency I had up until today is to have a third person help cart the material into ~~the~~ this building and I have brought my law ~~am~~ student with me today. Mr. Bell and I are carrying on almost ^{on} a continuous basis, presently, to effect a current review of the material as it arrives. I should tell members of the committee I have today received, but have not yet looked at, the files of Canada Square which have been volunteered to me, ~~and~~ happily, after today's effort, we will have a four-day interval for me to ^{brief} ~~read~~ that material. Just so that you know that the time really intervening between sessions is not really lost in the early stages of ~~the~~ a hearing, ~~because~~ I am concurrently preparing, examining, preparing and presenting the case, ^{perhaps} later, once the whole of the case is within the area between my ears, prolonged sittings would be in order; even evening sessions if you are willing to sit. At the moment, I am usefully employed ⁱⁿ ~~in~~ the intervals that elapse.

Mr. Bullbrook: I want to clarify ~~though that it is~~ ^{my concern} ~~that you weren't~~. It is quite obvious from the conduct of your examination thus far that a great deal of work has to go into it. I wasn't thinking of your own internal staff; I wondered whether you felt that you needed additional staff ^{to} ~~for~~ the committee available to the committee.

Mr. Shibley: Thus far, no. I have to tell the committee also that I am feeding material to Mr. ^{Anson} ~~Cartwright~~ and I have yet ^{to have} ~~had~~ any opportunity to confer with him. We will be a little while before we reach the financial facets of this

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transaction. I think it is of the substance of this committee's deliberation to consider whether the agreement was a provident, sound business agreement, ~~and~~ I intend to direct a lot of inquiry in that area when we deal with the people from Hydro who are on their finance end, primarily people like Mr. Dean and Mr. Cameron. Those people ~~I~~ will be called and I will have had the benefit, I know, of advice and comment from Mr. ~~Anson~~ Anson-Cartwright by that time so ~~that~~ as to conduct an intelligent examination of those witnesses. With respect to certain other possible witnesses, I have arranged for the clerk to write letters indicating that their attendance will be required as a preliminary to follow-up communication from me, intended to bring about an interview ~~and~~ that is down the road a piece as well. There is the modus operandi under which I am following up. If any members of the committee, ~~any~~ have any instructions ^{to} ~~from~~ me to proceed otherwise, I would be glad to ~~xxxxxx~~ receive ~~it~~ then.

Well, then, Mr. Gathercole, I want to turn ~~new~~ your attention now to the matter of the financing for this head office building. You have ~~made~~ it clear that a prominent consideration in your decision to do a lease-purchase transaction was the need to avoid affecting your ordinary borrowing sources, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And I refer you first to a letter to you dated February 17, 1972, on letterhead of Safrance and Associates Research Limited, directed to you and signed by John Safrance. Do you recognize that letter?

Mr. Gathercole: Yes. I do.

Mr. Shibley: May we have that made the next exhibit please?

Mr. Chairman: That would be Exhibit 31.

Mr. Shibley: Now first, Mr. Gathercole, I understand that Mr. Safrance was formerly with the finance division of Hydro. Is that correct?


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Mr. Gathercole: I am not certain whether it was the Finance Branch, but he was a former employee of Ontario Hydro.

Mr. Shibley: Yes, the organizational

Tape H 76 follows



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~~employee of Ontario Hydro. The organization~~ chart that has already been put in evidence ~~indicates that~~ - Exhibit 1 - ^{indicates} that he was the manager or economic consulting officer, and in fact was a superior of Mr. Cameron, who has been referred to in the course of the evidence. Is that correct?

Mr. Gathercole: That is correct.

Mr. Shibley: So that he was the person, Mr. Gathercole, who would be familiar with the financial and economic circumstances of Hydro? Is that correct?

Mr. Gathercole: Yes. He would have knowledge of ~~them~~.

Mr. Shibley: And he has latterly established his own business under the firm name, in fact it is a limited company, Safrance and Associates Research Ltd. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: I refer you to the letter, which is now Exhibit 31, wherein he states:

" I have been in communication with Mr. Henry Sissons and Messrs. Harold Banks and Milan Nastich ---"

Now, those three gentlemen are all ~~the~~ people within Hydro's organization; you have described their functions:—

"--- regarding the possibility of financing the proposed Ontario Hydro Head Office.

As you may be aware, \$35-40 million can be made available for the completion of this project, at rates competitive with Hydro's prime borrowing rate in New York. This money can be made available from a single source of insurance capital, thus increasing Hydro's funding capability beyond

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(Mr. Shibley)

"normal channels of long term financing (i.e. does not compete with traditional Hydro financing).

While we would prefer dealing directly with Ontario Hydro, should you decide to complete the project on a lease back basis it is possible that the same terms can be made available to the developer. In any event, I will be in touch with you to arrange a meeting to discuss this matter in the near future".

Now, Mr. Gathercole, with respect to that letter, first of all, were you aware as at February 17, 1972, that there had been earlier communications as between Mr. Safrance and Mr. Sissons, Banks and Nastich, as referred to in the first paragraph?

Mr. Gathercole: I hadn't been aware that there had been at that time.

Mr. Shibley: You had not been?

Mr. Gathercole: No, I had not been aware.

Mr. Shibley: All right. So that the first communication to you of the availability of an alternative source of funds as indicated by this letter was the letter itself of February 17?

Mr. Gathercole: As far as I can recollect, that was the letter that he wrote to me, and I subsequently referred it, I believe it was, to Mr. Sissons, as I understand.

Mr. Shibley: Yes. I will get to that ^{for the} ~~the~~ moment, I just wanted you to confirm or otherwise indicate to this committee whether this was the first time you were informed of the proffering of \$35 to \$40 million worth of financing by Mr.

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(Mr. Shibley)

Safrance?

Mr. Gathercole: That is my recollection; that is the first time.

Mr. Shibley: And you note that he indicates that this money is available at rates competitive with your prime borrowing rate in New York. ^{Would} ~~it was~~ that ^{be a} ~~the~~ significant circumstance~~s~~ respecting the funding of this building?

Mr. Gathercole: It would ~~be~~ certainly have some relevance to the project that we were seeking to finance.

Mr. Shibley: Yes. I will come back to this letter in a moment referable to its not competing with your conditional sources. You started to make reference—and I want to make the picture complete before we go back—I produce to you a letter dated February 21, 1972, which is your answer to Mr. Safrance, which we can make the next exhibit, 32.

Mr. Chairman: Exhibit 32.

Mr. Shibley: Wherein ~~the~~

Mr. Genest: Mr. Shibley, may I interrupt at this stage, because I think the committee may be misled. In the papers which I have, and I hope Mr. Shibley has, is a memorandum of February 14, ^{just a few days} ~~that is~~ before ^{this} ~~the~~ letter of the 17th, to Mr. Gathercole, from Mr. ~~Sigmond~~ ~~tax~~ ~~informing~~

(Tape H-77 follows)

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(Mr. Genest)

~~before this letter of the 17th to Mr. Gathercole from Mr.~~
Sissons, informing Mr. Gathercole, really of ~~what~~ what Mr.
~~Sissons was saying, what Mr.~~ Safrance was saying in his letter
of February 17.

Mr. Shibley: Thank you, Mr. Genest, I have got that
document. It is out of order but I will will get to it. I am
sorry, Mr. Gathercole, if I have misled you in any way by the
form of my questions, so I will come back to it again. Thank
you, Mr. Genest. I

I just want to get the exchange with Mr. Safrance.
On February 21 you wrote back;..

"I acknowledge your letter of the 17th. We
have not reached the point of making a
determination of the method by which we would
obtain funds for any head office that we would
build. However, you may be sure that your
proposal will be given very careful consideration
and when our plans develop we will be able to
discuss the matter further with you. Yours very
sincerely".

And then,

"P.S. I have arranged with Mr. Nastich for
you to discuss your ~~plan~~ proposal with him", ~~and~~
and a copy of your letter went to Mr. Nastich, so your
first response ~~was~~ ~~was~~, at least one of your responses to his
letter ~~was~~ ^{was} to answer it in those terms, to reference the matter
to Mr. Nastich, and then Mr. Genest has helpfully reminded me
that there was a memorandum also dated February 14, 1972, from
Mr. Sissons to yourself, that I will ask to be produced to you
now and made the next exhibit. That would be Exhibit 33.

Mr. Chairman: 33.

Mr. Shibley: This is a memorandum again:

"John Safrance, formerly of the Finance Branch
and now in private financial practice, has
discussed with Mr. Banks and myself from time

to time, the financing of the new building. He has now confirmed that through Wisener and Partners, and Merrill Lynch in the United States, \$35 or \$40 million ~~dollars~~ can be made available from a single insurance company source at a rate very closely related to our prime ~~the~~ long-term borrowing rate in the United States, (probably one-and-a-half per cent higher), presumably as a first mortgage, directly with Hydro rather than with a developer. While I have indicated to him that our first preference would likely be for a completely packaged development on a lease-purchase basis, I thought this should be conveyed to you."

"P.S. He will probably call your office in the next few days for an appointment, so I have told him that I am not sure that more detailed discussion of this possibility would be timely."

Mr. Shibley: So the ~~chemistry~~^{chemistry?} really was, you got a memo on February 14, 1972, as I have just read, rather than have himself follow up on an appointment ^{basis} ~~date~~. Mr. Safrance seems to have decided to write to you on February 17, and you answered his letter on February 21. ~~Mr. Safrance to~~

Mr. Shibley: Yes, and in fact, I should have put the question to you in this form; until February 14, 1972, you had not received communication from Mr. Sissons, or Mr. Banks, or anyone for that matter, as to the earlier communications from Mr. Safrance offering finance? Is that correct?

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Mr. Gathercole: Yes, that is correct. As far as I am aware this is the first information I had had on this subject.

Mr. Shibley: Now then, you then in turn, by memo dated March 9, 1972, which I ~~was~~ would ask be made the next exhibit.

Mr. Chairman: Number 34.

Mr. Shibley: You took the further step, I see by this memorandum, of that date, directed to Mr. Sissons;

"Re your memorandum of February 14 referring to the proposal of John Safrance to undertake the provision of money to finance the construction of the head office, ~~I indicate we should keep this proposal in mind.~~



Tape H 78 follows

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C.B.

(Mr. Shibley)

to undertake the provision of money to finance the construction of the head office. I believe we should keep this proposal in mind in the event that it could be to our advantage. ^{He P. 1000} I understand that Mr. Candy is assembling proposals from a number of prospective developers and I should like to make a submission to the Premier and other members of the Cabinet early in April. The matter of expediting the construction of the head office building has been discussed from time to time and I am desirous of making as much progress as possible.

Did you write that memorandum Mr. G?

Mr. Gathercole: Yes I did.

Mr. Shibley: And does that memorandum truly

reflect your thinking as of March 9, 1972?

Mr. Gathercole: Yes it does.

Mr. Shibley: All right. Advert to the fact that

gather when you said "I believe we should keep this proposal in mind in the event it could be to our advantage" were you still then considering the use of another method of financing the new head office building as late as March 9, 1972?

Mr. Gathercole: Mr. Chairman and gentlemen, we were keeping all methods open that would be available to us to realize our objective. Because we hadn't made any decision as to which course we would pursue; which course would prove to be the most economical or the most practicable. And so my feeling about it was that here was a man who was submitting a proposal and we ought to examine it.

Mr. Shibley: Now the other interesting portions of this memorandum which I might say I consider members of

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C.B.

(Mr. Shibley)

the committee, to be an important memorandum, is that it goes on and states, "At present I understand that Mr. Candy is assembling proposals from a number of prospective developers."

Was that your then understanding?

Mr. Gathercole: Yes, it was.

Mr. Shibley: Now, then, in that connection, Mr.

Gathercole, had you yourself, and I'll be getting into this in depth with you a little later, had you yourself been involved in exchanges with other prospective developers by this time?

Mr. Gathercole: I had had a luncheon meeting with Mr. Diamond of Cadillac Development Company, I believe he made the approach or had been referred to me and I had a luncheon meeting with him, and I believe it was on November 29th, I believe, that would be 1971, and at that meeting, besides Mr. ~~Candy~~ Candy, there was the general manager, Mr. ~~Sisson~~ Sisson.

Mr. Shibley: I don't want you to get into it in detail now, because I want just to keep on topic here.

Mr. Gathercole: And also I think in December, on December 14, 1971, Mr. Rotenberg and a number of members of his staff had come in to see me to discuss the head office possibility.

Mr. Shibley: Yes.

~~But again,~~

~~Mr. Gathercole~~ Mr. Gathercole, I want to know whether this memorandum reflects your state of mind as ^{of} March 9, as compared, perhaps, with ~~the~~ the state of mind of other people within your organization? ^{V-5-a-v-13} ~~other~~ prospective developments? ^{As far as} ~~if~~ you knew at this time,

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C.B.


(Mr Shibley)

Mr. Candy was pursuing proposals from other prospective developers?

Mr. Gathercole: He was pursuing the examination of other proposals; nothing was rejected.

Mr. Shibley: All right. Then the memo goes on, "I should like to make a submission to the Premier and other members of the cabinet early in April". Now what did you intend in that respect?

Mr. Gathercole: What I intended was that while we had full authority to ~~now~~ proceed with the building, we very well knew, ~~I knew~~ that the matter had received a good deal of attention, ~~It~~ had been the subject of debate in the Legislature ~~and~~ I thought that the province would have a decided interest in the fact that we were proceeding with the building, even though we had full authority to do so, and therefore that we should make some presentation to the Premier and the cabinet, if they were disposed to ~~wish~~ wish to have us make a presentation. On the other hand, if they considered.....



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(Mr. Gathercole)

~~Premier and the Cabinet had been asked to agree to have a submission made to the Premier and the Cabinet, if they~~
~~considered~~ that the responsibility was ours, then we would proceed to carry out that responsibility.

Mr. Shibley: Did you in fact ever make a submission to the Premier or to Cabinet?

Mr. Gathercole: No.

Mr. Shibley: Why not?

Mr. Gathercole: Because it was our responsibility to proceed with the building. We had the authority to do it. We had been engaged in the preparation ^{of} ~~and~~ plans, going back to 1968. We got a deferral and had accepted, because of economic conditions principally, a deferral ^{delay} ~~or a~~ in the ~~proposing~~ construction of that building and therefore it was a deferral and not ^{an} ~~abandonment~~ of the plan and so we just felt that it was our responsibility to go ahead.

Mr. Shibley: Well, Mr. Gathercole, how is that consistent with your statement in this memo to Mr. Bisson that "I should like to make a submission to the Premier and other members of the Cabinet early in April"?

Mr. Gathercole: Well, in a sense, ~~that was the only reason~~
I was suggesting that we get together the material, and if the government decided that they'd wish to review our plans instead of allowing the responsibility to rest with us, they had the option to do so.

Mr. Shibley: Yes.

Mr. Gathercole: That was the only reason.

Mr. Shibley: Well, we may come back to that. I'd like to just complete the material referable to discretion of financing.

Mr. Bullbrook: Excuse me, Mr. Shibley, you say we may come back to that. Is it your ~~intention~~ intention to come back to it?

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Mr. Shibley: If you'd like to ^{ask} further question on it now ~~at this time~~

Mr. Bullbrook: Would you prefer that we might —

Mr. Shibley: I'm concerned that we —

Mr. Bullbrook: Would it interfere with your train of thought if we asked questions about it now?

Mr. Shibley: What I would like to complete for the moment is the topic of financing. And I'm concerned that the committee not get distracted on the question of policy and ⁺regarding to Cabinet and so on.

So if you might defer — as soon as I've finished the topic of financing ~~and~~ ^{if you} want to go back to it on the other subject matter, fine.

Mr. Gathercole: May I, Mr. Chairman, draw attention to the fact we are spending now half a ~~million~~ billion dollars a year on construction including buildings, equipment and supplies. None of those submissions are made to Cabinet and we don't require the approval of Cabinet for them. But because we are building a head office diagonally across from the Parliament Buildings and because it had been a subject of debate in the Legislature, then it seemed to me that this might conceivably be a matter that the Cabinet might wish to review, but if it didn't wish to review it, then we intended to proceed.

Mr. Shibley: All right. Now, Mr. Gathercole, sticking with the question of financing for the moment, you have established for the committee what was your state of mind and your information as of February and early March of 1972. I want to go back now to the period commencing September 3, 1971, and produce to you a memorandum of that date from Mr. Farmer, the treasurer of Hydro, to Mr. Dean. May we have that made the next exhibit?

Mr. Chairman: Thirty-five.

Mr. Genest: What is the date on that?

Mr. Shibley: September 3, 1971. Now you will notice the references — first of all, who is Mr. Farmer?

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(Mr. Shibley)

What is his function?

Mr. Gathercole: He is the Treasurer — Ontario Hydro's Treasurer.

Mr. Shibley: Yes, and he references a letter of August 25th, 1971; ~~he says that~~ he's talking about Mr. Dean referring ^{to} three possible methods of financing and administration building.

" Our comments are:..

" 1. Use of pension fund money. ^{lies} ~~this approach was~~

~~refused some years ago and at that time stated that~~
~~and then~~

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(Mr. Shibley)

~~has of pension fund issues~~ " This approach was reviewed some years ago and, at that time, rejected by the auditors. In view of the desirability of maintaining an arm's length relationship between the commission's operation and the pension fund, I would consider this avenue ^{the} least desirable of the three.

2. Debt Financing

Over the next few years our borrowing needs will be ~~increased~~ increasing significantly above the 1971 level. Our reliance on markets external to Canada will thus be very substantial and growing. Since any marginal borrowings will be required from these external markets you can appreciate the uncertainty involved in forecasting the availability of funds or the probable cost. In principle I would not be anxious to expand our reliance on these foreign sources, particularly where alternate approaches can be considered.

3. Leaseback

From a cash flow point of view this avenue would appear the most rewarding to explore. We have already given some thought to the general concept of leasing equipment and find it a relatively attractive possibility because of high depreciation rates and consequent tax recoveries by prospective owners. The challenge in leasing a building will lie in finding a formula which will provide a satisfactory cost to Ontario Hydro. "

Now, Mr. Gathercole, did you receive a copy of that memorandum at the time it was prepared?

Mr. Gathercole: Mr. Shibley, I didn't receive a copy of it, but I generally subscribe to the views that are set out there.

Mr. Shibley: I must tell you, Mr. Gathercole, in the latter material, the material that was ultimately submitted to the

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(Mr. Shibley)

Commission members, it appears that this was a very basic tenet upon which the Commission was being asked to proceed, was it not?

Mr. Gathercole: It was, definitely.

Mr. Shibley: Yes, ~~that~~ the advice you'd had emanating from the Treasurer was that you should be cautious about marginal borrowings from external markets and so on, all as per this memorandum. Is it fair to describe this memorandum as the seed which was planted, or the basic information upon which that advice to the Commission was founded?

Mr. Gathercole: Yes, it was.

Mr. Shibley: And it carried through, really, into all the documentary material which was support data that finally reached the Commission many months later, did it not?

Mr. Gathercole: Yes, it did.

Mr. Shibley: All right. Well, then, the next document I want to produce is another letter from Safrance, dated September 3, 1971, directed to Mr. Harold Banks, who is the assistant general manager. May we make that Exhibit 36?

Mr. Chairman: 36.

Mr. Shibley: Now, you will note, Mr. Gathercole, that the receipt stamp on this document is September 7, so I'm presuming that this document was received by Mr. Banks in his office on that date. Is that correct? Is that your Hydro stamp?

Mr. Gathercole: Yes.

Mr. Shibley: Yes. And that would be four days following the memorandum from the Treasurer, Mr. Farmer. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: Now, the letter proceeds as follows:

"I have been advised and would like to confirm in writing that money in the amount of \$35 million or \$40 million can be made ~~available~~ available for the completion of the proposed Ontario Hydro head office.

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" Based on our discussions -- "

That would be discussions between Safrance and Banks, is that correct?

Mr. Gathercole: Yes
"bley: "-- it would seem to make sense that a single source of insurance capital (which has been secured by Wisener and Partners in co-operation with Merrill Lynch in New York) represents the logical approach to financing.

The advantages would appear to be as follows:

- "
1. The financing does not compete with Hydro's traditional sources of funding.
 2. A direct financing of the ~~public~~ nature discussed eliminates ownership by the developer.
 3. The approach ensures the minimum cost possible because Hydro is in effect, the developer and manager.
 4. All the advantages of a lease back are present.
 5. A vehicle for future potential diversification and Hydro financing will have been established.

" It seems to me we have available here the best approach and the logical private lender for this financing and I hope it will be possible for Hydro to proceed ~~with this~~

~~In the meantime I feel it~~

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~~financing, and I hope it will be possible for Hydro to proceed~~
with this important project. In the mean time, I feel it would be advisable to tie down the terms for the capital we have located on the assumption that a favourable decision to proceed with construction will be made.))

Now, Mr. Gathercole, would you agree with me that this offer of money for this project was an important piece of information so far ~~as~~ as Hydro is concerned?

Mr. Gathercole: Yes, it was a proposal to provide funds, very definitely.

Mr. Shibley: Well, when I say it was important, you've got, first of all, a responsible individual communicating with Mr. Banks. Would you agree with that?

Mr. Gathercole: Yes.

Mr. Shibley: And an individual who is knowledgeable as to what kind of a transaction would be acceptable to Hydro for financing. Is that not a fact?

Mr. Gathercole: Yes, That is true, yes.

Mr. Shibley: And the terms of the offer of monies, were certainly sufficiently near to what you would want to be of interest to you, were they not?

Mr. Gathercole: They may well be, but I —

Mr. Shibley: Yes, and — I'm sorry, ^{do} you wanted to finish your answer?

Mr. Gathercole: I was just going to add, I ~~hadn't~~ ^{hadn't} seen this document myself, and I did feel that the Safrance and Associates Research Limited proposals should be examined. Now I understand it was examined.

Mr. Shibley: This is what disturbs me, Mr. Gathercole. Why would a letter of this import, and received by Mr. Banks on September 3, not be brought to your attention until the memorandum

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M.T.

H-81-2

(Mr. Shibley)

of February 14, which is Exhibit 33, from Mr. Sissons. Now, that's a delay of five and a half months, being a very critical period of time in terms of your deliberations and the deliberations of members of the commission respecting the funding of this building, was it not?

Mr. Gathercole: Yes, it offered a possibility, an alternative source of funds which had to be assessed by our technical people to ascertain its validity.

Mr. Shibley: Well, what I am asking you, really, Mr. Gathercole, is whether you should have expected to receive from Mr. Banks an immediate communication of the proposal of Mr. Safrance when it was first made on September 3 and received by him on September 7, 1971.

Mr. Gathercole: Well, I would think this would ~~be~~ be a detail that Mr. Banks was fully authorized to assess himself and to arrive at a conclusion.

Mr. Shibley: Well, Mr. Gathercole, when you did find out about it in February of 1972, you considered it sufficiently important to refer the matter to Mr. Nastich —

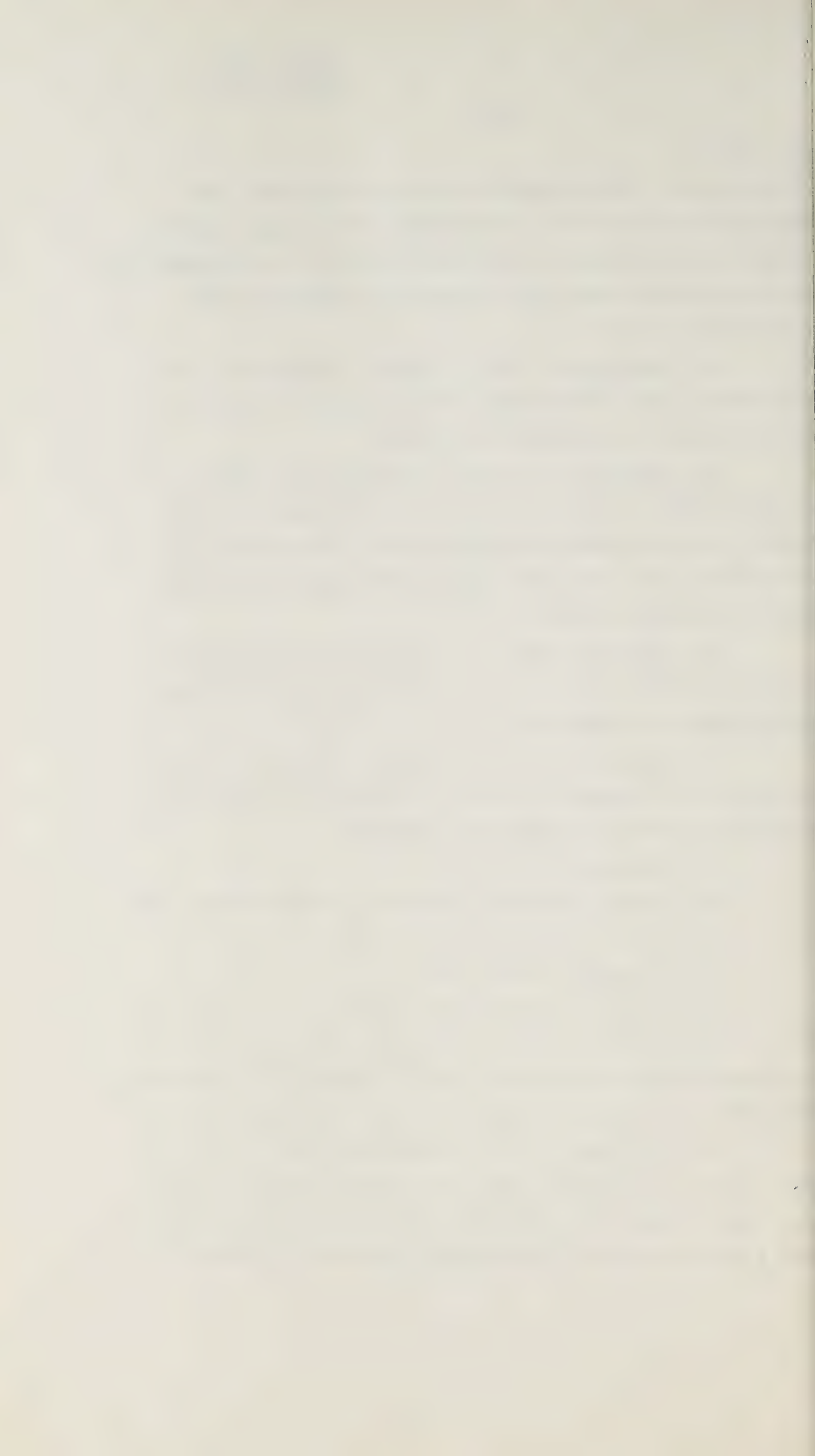
Mr. Gathercole: For study.

Mr. Shibley: —for study, and you referred ~~the~~ the matter also to Mr. Sissons to keep the proposal in mind.

Mr. Gathercole: Yes, I did.

Mr. Shibley: And as I say, I think the committee would be interested in knowing your views as ~~to~~ to the propriety of Mr. Banks deferring any advice to you or members of the commission respecting this proposal for some five and a half months.

Mr. Gathercole: Well he would have to assess as to how major an offer it was, and I don't know what his assessment of it was. When it came to my attention, I said, "This isn't something that I am in a position to analyze" and therefore I assigned it to



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Milan ~~at~~^{sent} first, I think I telephoned Milan Nastich, and then also later on the ~~memorandum of the~~ letter to ~~Mr~~ Henry Sissons and ~~I~~ asked that it ~~be~~ be investigated.

Mr. Shibley: You will notice that there are some handwritten notes attached to that exhibit. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: Can you identify the handwriting ^{of} ~~of~~ those handwritten notes?

Mr. Gathercole: No, I am not able to.


Mr. Shibley: All right. Well then we will leave it.

Mr. Deans: Can you tell us what they say?

~~Mr. Gathercole: I am not able to.~~

....

Tape H-82 follows



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3.55 - 4.00 p.m.
R.E.S.

H-82 / 1

(Mr. Deans)

~~...can tell us what they say~~

An hon. ~~member~~ ^{we}: Can't read ~~them~~ our copies.

An hon. member: That's Hydro, isn't it?

MR. Chairman: You mean your copies aren't legible,

Mr. Deans, ² ~~there~~

Mr. Renwick: That's correct.

Mr. Deans: That would be a pretty good interpretation.

Mr. Chairman: All right, but it's not ~~legible~~ ~~from~~
the printing; you just can't read the writing.

MR. Deans: That's right.

Mr. Chairman: Well, I guess maybe we'll have to try
and find ...

Mr. Deans: Well, I don't know, it's a combination of
both; I can't read the reproduction.

An hon. member:

~~Mr. Bullbrook~~: The photostat hasn't picked it up.

Mr. Deans: Maybe I couldn't read the writing either,
for that matter.

Mr. Bullbrook: Did you want my interpretation?

~~X~~ Shibley:

Mr. ~~Shibley~~: Yes, please, You're the expert.

Interjections by hon. members.

Chairman:

Mr. ~~Shibley~~: You're the authority on handwriting

analysis.

Shibley?

Mr. ~~Shibley~~: Would you read it in?

Mr. Deans: What's at the top of this phrase?

Mr. Chairman: ~~Oh~~, Can you read it?

Mr. Bullbrook: ~~Mr. Shibley~~: No, I can't read it.

Mr. Chairman: Oh, all right.

Mr. Allan: Oh, I think I can read it.

Mr. Deans: Well, would you start on the second
~~any~~ page and tell me what's at the top of it?

Mr. Bullbrook: Who's got the original?

Interjections by hon. members.

An hon. ~~member~~: No, not that one.

An hon. ~~member~~: Oh, not that?



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R.E.S.

H-82 - 2

~~_____~~
~~_____~~
~~_____~~
Mr. Genest: I think Mr. ~~_____~~ Bell was ~~_____~~
there's some material in front of him.

~~_____~~
~~_____~~
Mr. Shibley: Oh, great, we are better prepared
than we thought.

The first page would appear to read;

"He followed up with me at 9.15 a.m. on 22/10/71..."
which I am presuming is October 22, 1971,

"and I advised him I would get back to him on one
of two bases: (1) Not interested; (2) Give us a
bid on a lump-sum financing as he proposed."

~~_____~~ Did you also have typed the second
hand-written page, Mr. Genest?

Mr. Genest: NO, I didn't.

Mr. Shibley: Might you have that done before next
day? ~~_____~~ I think I can make it out, but I don't want to
misread it.

Mr. Genest: Yes, sir. Is that the one that ~~_____~~ is headed
"Space ~~_____~~ (Confidential)"?

Mr. Shibley: Yes, yes.

Mr. Bullbrook: Yes.

Mr. ^{R.}G. Hodgson: Is it possible to have the author
identified? ~~_____~~

Mr. Shibley: Yes.

Mr. Genest: I am told it is in Mr. Banks'
~~handwritten~~ handwriting.

An hon. member: Banks.

Mr. Shibley: ~~XXXXXXXXXXXX~~ Thanks.

Mr. Genest: ~~That is~~ the document ~~has a 7/10/71~~
that is headed "Space (Confidential)"

Mr. Shibley: Thanks, ~~then~~

H-82 - 3

(Mr. Shibley)

In any event, returning to the document itself, Mr. Gathercole, did you ever receive a report from any source, Mr. Banks or otherwise, referable to this proposal?

Mr. Gathercole: No, I didn't. To the best of my recollection there was no report that I received.

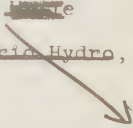
Mr. Shibley: And so far as members of the Hydro Commission were concerned, the material tabled with it at the time of its deliberations of this agreement made no reference to this offer of funds?

Mr. Gathercole: NO.

Mr. Shibley: And ~~is~~ similarly, I am producing to you a letter dated January 25, 1972, from Mr. Safrance to Mr. Sissons. I would ask to make it exhibit 37.

Now this is a letter dated January 25, 1972, from John Safrance to Mr. Sissons:

"Dear Henry ⁹/₁₀ - I have been advised, and would like to confirm in writing, that money in the amount of \$35 million or \$40 ^{million Can} ~~million Can~~ be made available for the completion of a proposed Ontario Hydro head office. Based on our discussions of January 25, it would appear that there is a great deal of room ~~is~~ for imaginative approaches to the financing and eventual development of this important project. As ^{initially} ~~initially~~ pointed out, the financing charges may represent the single most important cost component. However, because the money that has been ~~is~~ made available to us is from a single source of insurance capital, the terms can be expected to be very favourable, relative to Hydro's prime rate for borrowing, ~~there~~ ~~we would prefer to dealing directly with Ontario Hydro,...~~



(Tape H-83 - 1 follows)



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DT

(Mr. Shibley)

~~interesting~~ "While we would prefer dealing directly with Ontario Hydro, it is possible that you might wish us to make these funds available to the developers ~~as~~ should a lease-back proposal be accepted. In any event, I will be in touch with you ~~xx~~ regarding this matter in the near future." Now, MR. Gathercole, ^{would} ~~what's~~ your answers with respect to the communication between Safrance and Bank be the same with respect to questions as for the letter from Safrance to Sissons dated January 25, 1972?

Mr. Gathercole: Yes, it would be.

Mr. ~~Sh~~ Shibley: So that again Mr. Sissons did not bring the proposal of Mr. Safrance to your attention until his memorandum to you of February 14, ^{Is} that correct?

Mr. Gathercole: Yes, ^{but} ~~and~~, Mr. Shibley, they would have analysed this proposal and evaluated it.

Mr. Shibley: Well, what is disturbing to me, Mr. Gathercole, and perhaps the committee members would be ~~interesting~~ interested in knowing ^{it} ~~is~~, why these two men who were heading up divisions of Hydro would presume not to inform you about such an important matter as an offer of \$40 million immediately it was presented to ^{them} ~~you~~ ~~the committee~~

Mr. Gathercole: Mr. Shibley, I don't know what the conclusion was in this proposal. I can only say to you that our treasury people received innumerable offers of money, borrowing that they can arrange through sources in New York or Asia, wherever it may be, and most of these don't pan out and they don't refer all these matters to me. Sometimes I receive ^a communication from someone overseas in Paris or somewhere else who has got - even from New York yesterday someone called ^{we} ~~they~~ and said ~~they~~ could lend you \$170 million in German francs. I don't explore that.....

Mr. Bullbrook: ~~Inaudible~~ I wouldn't either. I'd be suspicious of German francs. I'd say "Mr. Gathercole, don't take a chance!"
Mr. Gathercole: Well, maybe they were! That happens to be a fact, so to my mind this is a normal procedure. This was



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DT

(Mr. Gathercole)

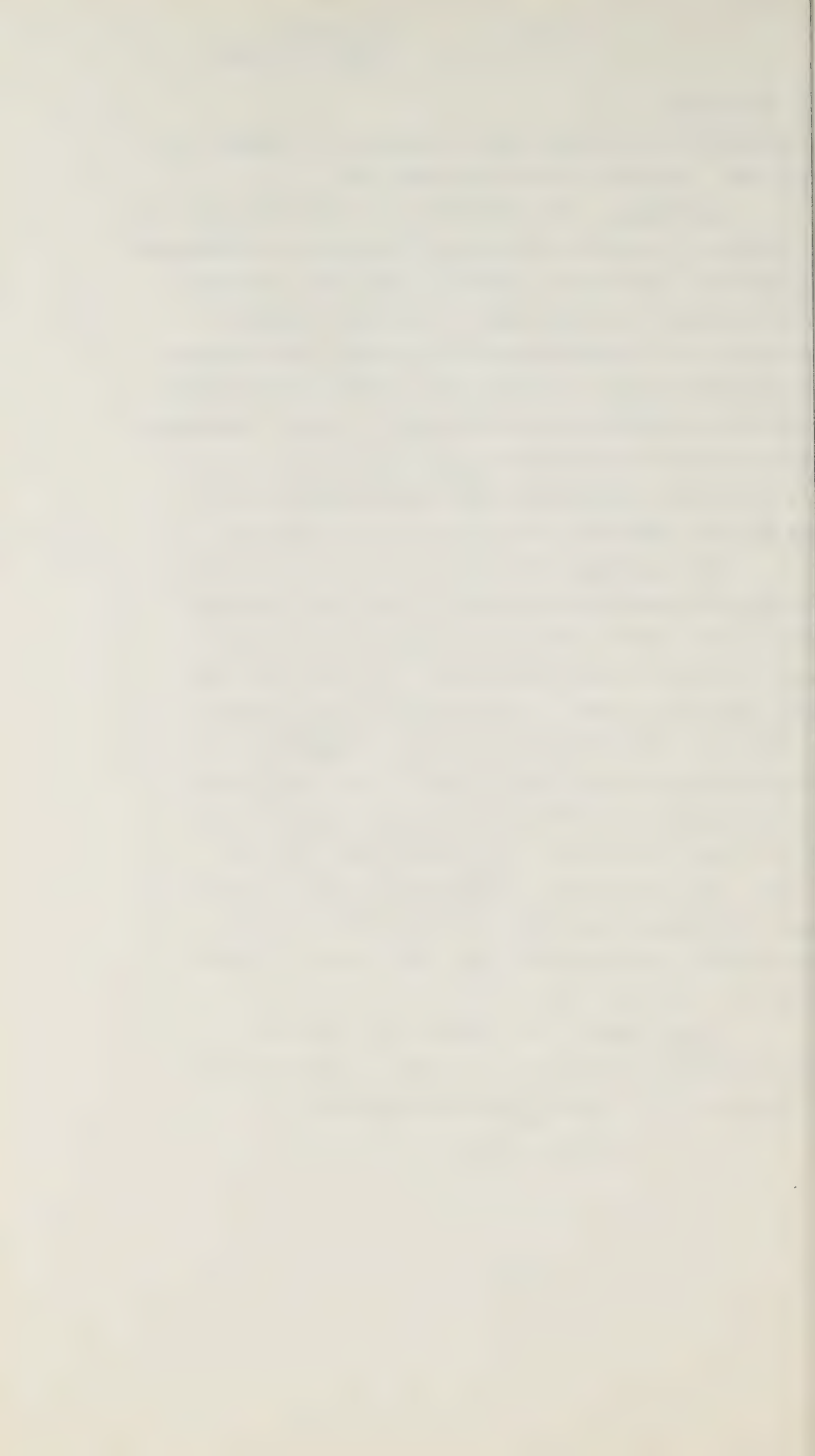
an evaluation of a proposal that was carried out by people who are bright, conversant in this particular area.

Mr. Renwick: Mr. Gathercole, if I may just interject, Mr. Chairman, surely the reputation of a company such as Safrance and Associates Research Ltd. cannot be dealt with in the way in which you have dealt with them. I am going to ask you specifically if a letter written by a reputable firm with whom you are knowledgeable, because he was a former employee, making a specific confirmation of the availability of funds, identifying reputable firms in the New York money market through which it will be done and reconfirming it ^{on} two other occasions is not some ~~id~~ idle suggestion that perhaps it may be available.

Mr. Gathercole: I didn't say it was, Mr. Renwick. And if I did communicate that thought, well it was certainly not intended. What I was saying was that these gentlemen, these officials, are analysing ~~the~~ the various proposals that ~~are~~ are being made to them. I wasn't attributing to Safrance, or these very good other companies, Wisener & ^{Partners} ~~Company~~, people I know myself, and Merrill Lynch, that they fell within this category whatsoever. They are outstanding companies and as far as I know, ^{Mr} Safrance is a very ~~outstanding~~ outstanding man as well. All I was saying is ^{that our} ~~there are~~ people ^{are} in a position of ~~to be evaluated~~ ~~in~~ these matters and they have a number of proposals that are made before them, some of which - many of which, don't work out. That was all I was saying.

Mr. W. Hodgson: Mr. Chairman, Mr. Bullbrook wanted to raise a question some time back on another matter. It was suggested at that ~~time by the council~~

(H-84 to follow)



May 24th, 1973

4.05 - 4.10 pm

H 84 - 1

AA

(Mr. W. Hodgson)

~~the question some time back and it was suggested that at that~~
~~time by the counsel that we would~~ *HOLD* ~~our questions until we~~
~~had completed~~
this matter of financing. Now, are you through with financing?

Mr. Shibley: No, I am not.

Mr. W. Hodgson: Well, is the line we are going to follow, or are we going to break in periodically?

Mr. Chairman: Well, this is a break-in in regard to this matter. I think you have completed, have you not, Mr. Renwick?

Mr. Renwick: Yes, *now this is directly* ~~unless it is directly~~

referable to the financing proposal which

Mr. W. Hodgson: As long as you follow *the* line of pattern;

~~if~~ if one member is going to break in, then we all might as well break in.

Mr. Renwick: *And* you are quite free to, *(as I understand --)* Mr. Chairman.

Mr. W. Hodgson: No, we are not. ~~Wait~~ Mr. Bullbrook wanted to break in *wait until we finished on/finan*

Mr. Deans: *It was about* ~~wait until we finished on/finan~~ Put the vote on another matter.

Mr. W. Hodgson: *He was told to* wait until we finished on financing, before we started *raising questioning*.

Mr. Chairman: I think that Mr. Bullbrook wanted to pursue another avenue.

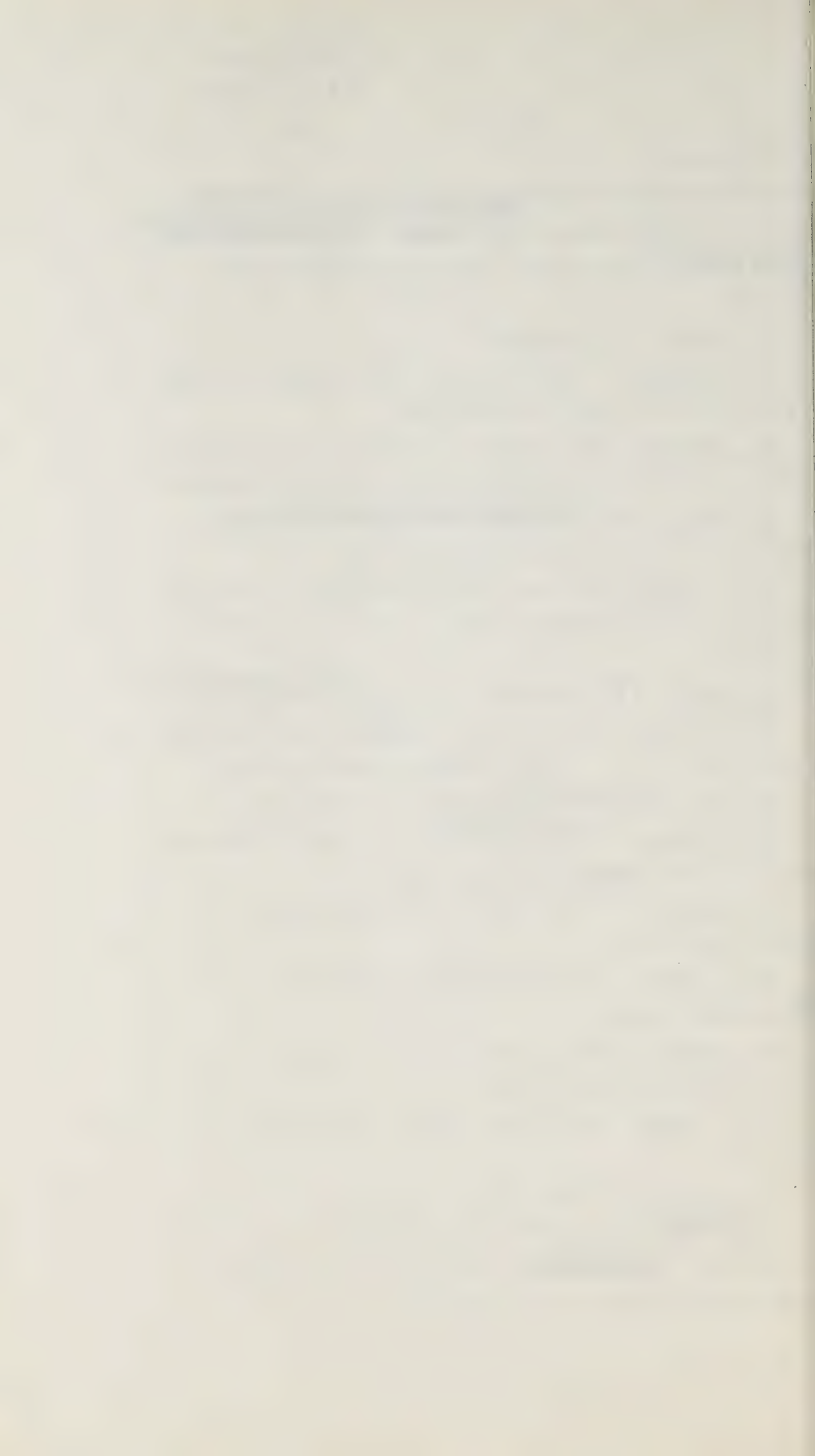
Mr. W. Hodgson: Well maybe ~~that~~ you're right to pursue another avenue.

Mr. Chairman: And Mr. Renwick's point, I think, was still dealing on this same avenue.

Mr. W. Hodgson: Well, what applies to one should apply to us all.

Mr. Chairman: It's back to Mr. Shibley.

GATHER COLLE
Mr. ~~Shibley~~: Mr. Chairman, I want to make it clear that ~~derogating~~
in no way was I ~~derogating~~ Mr. Safrance or Merrill Lynch or Wisener and Partners, no way was I doing that. If I



May 24, 1973
 KXN 4.05-4.10 pm
 V.H.

CHAIRMAN: MACBETH
 (Mr. Gathercole)
 (Mr. Shibley)

inadvertently gave that impression, I apologize.

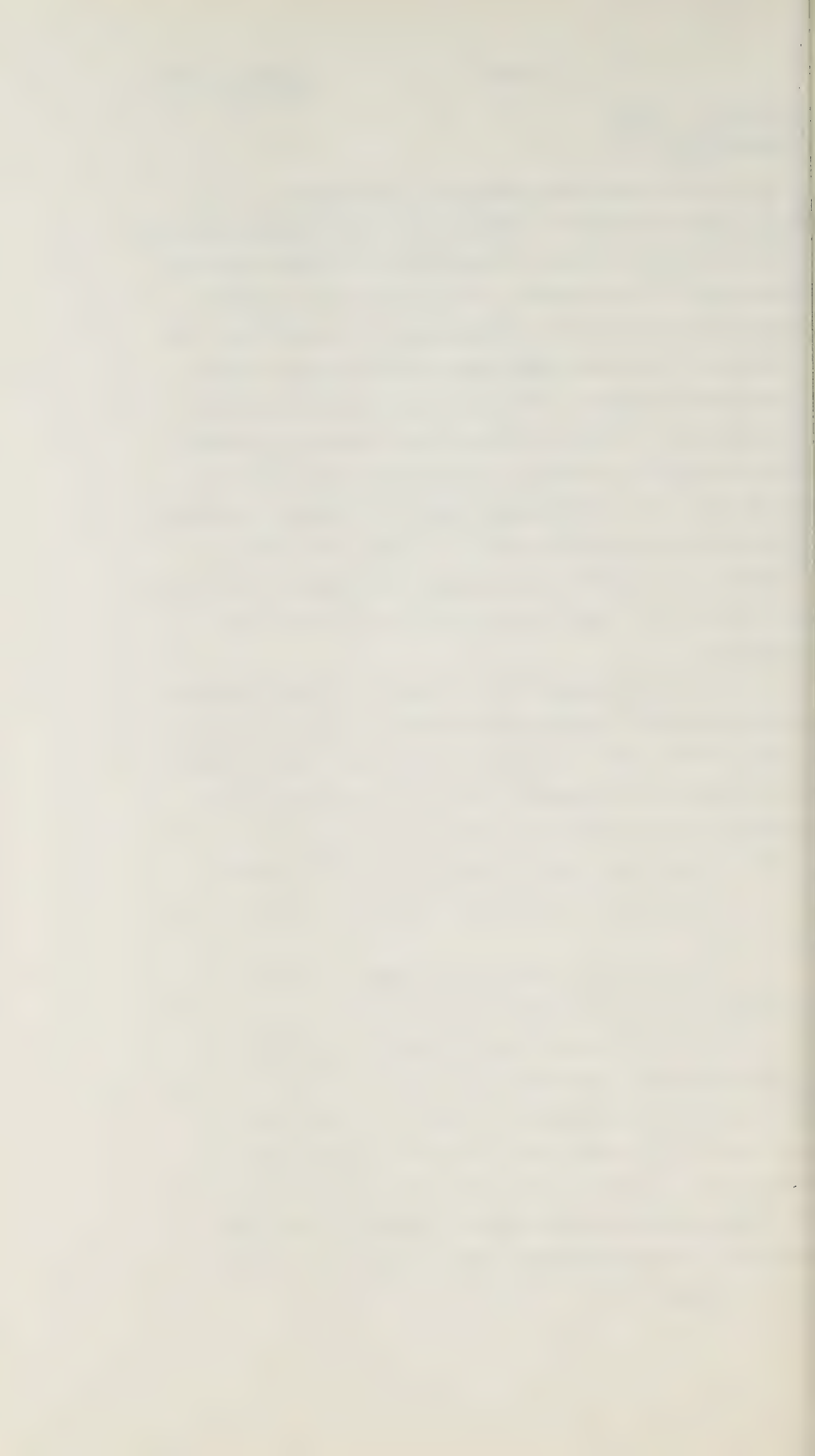
Mr. Shibley: Mr. Gathercole, I would turn to the question that really is in my mind and I suspect ~~it~~ it is in the minds of members ~~of~~ of this committee. Very basic to the decision of Ontario Hydro to do a lease-purchase transaction was the avoidance of borrowing additional monies from your traditional money markets. That's what you have already said, and here was an offer by a responsible firm and by someone knowledgeable as to the kind of transaction, if I may put it that way, that Hydro could engage in in terms of funding, which was not tabled with you or the Commission during a material time in terms of your ~~at~~ deliberations as to whether you would go the lease-purchase route or fund your own building.

Mr. Gathercole: Mr. Chairman, there are limitations on the instruments that can be employed by Ontario Hydro in raising funds under the terms of our borrowing. For instance, in West Germany, we are not able to segregate part of our assets and pledge them for certain securities. This is another reason which may have influenced their thinking.

Mr. Shibley: All right. I am going to produce to you

Mr. Bullbrook: Well, I want ~~to~~ on the question of financing, ^{to} ask something. I am interested in your interpretation of Mr. Safrance's proposition set forth in two of the exhibits - certainly in this one - that the funds ^{not} only could be made available to Hydro on a direct basis, but they would be available to the developer on a lease-back basis. I put it to you, that really the security that Mr. Safrance's principals would be looking to would have been the security of Ontario Hydro and not the developer.

Mxx



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V.H.

Mr. Gathercole: Undoubtedly that's what they would have interpreted.

Mr. Bullbrook: Thank you.

Mr. Chairman: Mr. ~~W~~ Hodgson, I didn't want to cut you off if you had any questions with regard to financing.

Mr. W. Hodgson: Well, yes back to memorandum 34. I would like to clear it up a little more: "At present, I understand, Mr. ^{that} ~~Campbell~~ ^{Candy is assembling} ~~had submitted and reviewed~~ proposals (a number of prospective) ^(make a submission) from developers, and I should like to mention to the Premier and other members of Cabinet". I would like to know why that ^{submission} ~~permission~~ wasn't made ^{Did} ~~reach~~ you at any time talk to the Premier on this? ~~Of~~ any member of cabinet? That advised you that it wasn't necessary to review this with Cabinet or the Premier?

Mr. Gathercole: I never received any advice from the Premier that it was not required to be reviewed by Cabinet. ~~I certainly kept him informed that no review was proceeding without~~

H-85 follows

May 25, 1973
4.10-4.15 p.m.
M.F.

H - 85 - 1

(Mr. Gathercole)

~~myself~~ I certainly kept him informed that we were proceeding with our building plans but the position had been taken by the government, certainly under the former Premier, that Ontario Hydro had full authority under section 38, I believe it is, of the Power Commission Act to proceed with its building, and that was back in 1968, and that the government was not in a position to impede the construction of that building except that it did insist upon the co-ordination of borrowing in which it would require the co-operation of Ontario Hydro. That was the authority which was set out at that particular time and the manner in which it was explained.

Mr. W. Hodgson: But you were never at any time directed by the Premier or any member of Cabinet? It wasn't necessary to review this with them?

Mr. Gathercole: I was never directed that we didn't have the authority to proceed.

Mr. R. G. Hodgson: Mr. Gathercole, the minister ~~who~~ ^{on} who reports ~~that~~ Hydro reports to ~~the~~ the Legislature, have you kept that minister informed?

Mr. Gathercole: Yes, I have.

Mr. Chairman: Now we have started down this avenue that Mr. Shibley wanted to wait to carry on later on, but you had some questions on it, Mr. Bullbrook?

Mr. Bullbrook: No, I am going to let Mr. Shibley continue. ~~The purpose~~ I think I should clarify it, if I might, my intentions in connection with my interjections are as follows; That I feel free at any time, subject to the normal demeanour that must prevail, to interject and question, But it is obvious that counsel, on our behalf, intends to go down a certain lane and I don't want to divert him from that particular intention that he has, and That is why I want to go into much more detail on the question of Hydro's authority, but I will do

H - 85 - 2

(Mr. Bullbrook)

that after we are finished with financing.

Mr. Chairman : All right. That is why I thought Mr. Renwick's question was more on finance; he was dealing with the financing end of it.

Now this is a different subject and you want to reserve your right to come back to it, and I think maybe Mr. Shibley himself would like to come back to it, so we will let you continue on now Mr. Shibley with the financing end of it.

Mr. Shibley: Thank you. I would like to produce to the witness a memorandum dated October 25th, 1971, prepared by Mr. W. J. Stewart, solicitor to Mr. Dean, with a copy to Mr. Raney, and perhaps we might make that exhibit 38.

Mr. Stewart is a solicitor with Hydro, is he?

Mr. Gathercole: Yes.

Mr. Shibley: And who is Mr. Raney?

Mr. Gathercole: Mr. Raney is our legal counsel.

Mr. Shibley: So these two men are part of your legal staff?

Mr. Gathercole: ^{Yes.} Mr. Raney is the head of the legal staff.

Mr. Shibley: Right. The memorandum is directed to Mr. Dean; it is dated October 25th, 1971. I am not going to get into this in detail. It starts:

"Your memo to W. J. Raney, dated August 25th, 1971, raised two questions:-

1. Whether there would be any problem because of the statements in our recent prospectus and agreements in arranging financing secured by the building as a specific asset; for example, if we issued^a special indenture or first mortgage;

2. What are the limitations on having the pension fund investing money in the building, either on a first mortgage,

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4.10-4.15 p.m.
M.F.

H - 85 - 3

(M r. Shibley)

lease-back, or a special issue of Hydro securities."

" The answer to question number one is 'yes.' " In other words there would be problems to arrange financing secured by the building as a specific asset.

" The bond purchase agreement of August 4, 1969, made with the syndicate of banks represented by Deutsche Bank for the issue of seven per cent Deutsch mark bearer bonds in the aggregate of \$150,000,000 Deutsche marks contains, inter alia, in the "conditions of issue" the undertaking of Hydro 'until maturity of the bonds, at least, however, until the date on which the funds necessary for redemption and interest payments have been made -"

Tape H - 86 follows

H-86-1

(Mr. Shibley)

~~until maturity of the bonds, or, at least, until the date~~

" on which the funds necessary for redemption and interest payments have been made available to Deutsche Bank, not to secure any bond issues without, at the same time, letting the bond holder of this issue share pari passu in ~~and~~ such security.³ The bonds are guaranteed by the Province of Ontario. The agreement provides that Deutsche Bank will hold and exercise as Trustee the rights arising from the guarantee given by the province as well as rights arising from any other security;"

Now then, I would like your own comments, Mr. Gathercole, referable to the matter of financing as it is affected by the bond purchase agreement referenced in this opinion letter.

Mr. Gathercole: Mr. Shibley, we recognize ~~as being~~ these interpretations⁴ placing limitations on the flexibility by which we could raise money for this specific purpose. This ~~was~~ our understanding, and this ~~was~~ ~~been~~ certainly part of the motivation for us taking the route of a lease purchase where we wouldn't be raising the funds ourselves, or not in any other way committing the assets in a manner which would offend against the terms of our bond issues.

Mr. Shibley: Well now, would the kind of financing offered by Mr. Safrance be affected by the conclusions reached in this opinion letter?

Mr. Gathercole: It was my understanding at the time that they would be. But on that question I can't be absolutely sure. It was my understanding at the time that there was a legal interpretation to the effect that they would put a limitations on the proposal that was being made by Mr. Safrance.

Mr. Shibley: What I am wondering about is...

Mr. Bullbrook: Mr. Shibley, would you clarify what the witness means by "at the time"? I was under the impression he didn't know about this at that time.

H-86-2

Mr. Shibley: Would you like to answer that?

Mr. Gathercole: I didn't know about the detailed proposals here. But I had received a letter from Mr. Safrance making a proposal to lend money.

Mr. Bullbrook: My dates are ^{in error} ~~earlier~~, I'm sorry.

MR. Deans: No, ^{but} this is a ~~new~~ ^{new}.

Mr. Bullbrook: I'm sorry, will you pursue this? You can see that obviously ^{the word} "at the time" cause us great concern. The letter from Mr. Safrance is much later.

Mr. Shibley: I think ^{what} Mr. Gathercole, intends ~~under~~ fairness —

Mr. Gathercole: Well, ^{what} I am referring to is at the time of our consideration of the method of financing the cost of the building. Is that all right?

Mr. Bullbrook: Well that is exactly what I ^{hoped that} ~~thought~~ you meant. Right.

Mr. Gathercole: At the time we were financing the cost of the building ^{or of the building}, not of this proposal, ~~new~~.

Mr. Shibley: Was the advice that the commission was receiving to the effect that because of the bond purchase agreement of August 4, 1969, you could not specifically charge the new head office building with a mortgage which would fund its construction?

Mr. Gathercole: Mr. Chairman, this is a highly technical area. I know if you go one route it would infringe upon the terms of our bond issues from West Germany and indeed from Switzerland. We had one from Switzerland as well. Now whether there is some special vehicle which would avoid that infringement on the terms I am not ~~am~~ prepared to say.

Mr. Shibley: That was going to be my next question. Was there every any investigation made of methods by which any obligations or limitations upon you under that bond purchase agreement could have been avoided by agreement with the opposite party for purposes of permitting the funding of this building on a specific charge?

Mr. Gathercole: The advice I had was there would not be; under our loans in Germany, there would not be.

Mr. Shibley: Would not be what?

4:15 - 4:20 pm
CA

H-86-3

Mr. Gathercole: There would not be any exemption of a special loan or source of money earmarked for the construction financing of this building.

Mr. Shibley: Was it ever investigated? ~~Is~~ As a matter of negotiation with the Deutsche Bank?



H-87-1 follows

May 24/73

4:20-4:25 pm

C.B.

~~(Mr. Shibley)~~~~negotiation~~~~negotiation with the Deutsche Bank~~

Mr. Gathercole: I would think that ~~most had~~ ^{it would have}

been ~~invested there~~ investigated.

Mr. Shibley: You have no personal knowledge or information in that respect?

Mr. Gathercole: No, I have not, no.

Mr. Deans: Mr. Shibley, Mr. Gathercole stated the advice he got or had, ^{Who} gave you the advice?

Mr. Gathercole: Well, our assistant general manager of finance, and our legal, there are legal ~~documents~~ ^{counsel} documents on this.

Deans:

Mr. ~~Deans~~ ^{documents? You say}: There are further, ^{documents?} there is further documentation?

Mr. Gathercole: Well, I don't know if there are ^{documents?} any further. ^{document} This is one right here; this is one legal document.

Mr. Deans: What I'm trying to get at is there further documentation with regard to that particular advice?

Mr. Gathercole: I don't think there is, no. But there may have been discussions about it and some areas of uncertainty.

Mr. Deans: Was there discussion or wasn't there discussion? You said there may have been. You said, first of all, the advice you got was that way.

Mr. Gathercole: That's right.

Mr. Deans: Then you said "there may have been discussion". Was there or wasn't there discussion?

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4:20-4:25pm
C.B.

Mr. Gathercole: There were discussions about this particular matter ^{as} to what type of vehicle would be permissible under the terms of our financial arrangements, particularly in the matter of borrowing money from West Germany; West Germany in particular ^{and} ~~xxxxxxxxxxxx~~ later Switzerland.

Mr. Deans: And that was specifically referring to the proposal put forward by Safrance?

Mr. Gathercole: It was in that general context.

Mr. Deans: Were there other proposals put forward ~~at~~ a similar nature in regard to the building of this building that we've yet to hear about?

Mr. Gathercole: No, ~~that~~ ^{that} was not - the point I'm making ^{is} it wasn't an alternative that was being ruled out on.

Mr. Shibley: In 1969, ~~was~~

Mr. Gathercole: Let me make myself clear: It wasn't an alternative to finance it separately by some other instrument. It ~~was~~ wasn't being ruled out.

Mr. Shibley: In 1969, for the latter part of that year, you were then contemplating constructing a building owned and financed by Ontario Hydro, were you not?

Mr. Gathercole: Yes.

Mr. Shibley: And that decision to defer was not made until the very end of 1969 or early 1970. Was that not so?

Mr. Gathercole: That is true, yes.

Mr. Shibley: Well, if the arrangement with the Deutsche Bank was made as at August 4, 1969, in what manner was it intended to fund the ~~f~~ building as originally planned?

Mr. Gathercole: In the case of the original plans

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4:20-4:24 pm

C.B.

(Mr. GATHERCOLE)

^{bankrolling}
we were contemplating ~~a bank holding~~ it out of the issue of our own bonds guaranteed by the province. In the case of the building, the second set of plans for the construction of the building, we felt that we would not be relying upon those sources, those traditional or conventional sources, of funds and should find some other means of financing the cost of the building. That change transpired because of the sharp increase in our capital requirements and borrowings.

Mr. Chairman: Mr. Genest, have ^{you} ~~you~~ got a wrong date there?

Mr. Genest: We have had some more problems with documents, Mr. Chairman, ^{Another one has popped up} ~~not only late but also~~ that I hadn't seen, and I think it's very relevant to the subject matter. It is a memorandum for the file showing the subject of I think, Mr. Safrance's letter was discussed at the commission level on September 15, 1971. It has just come to my attention now. I apologize, but we are still gathering these documents together.

Mr. Chairman: We realize your difficulty.

Mr. Shibley: Mr. Chairman, may I suggest we normally break for five minutes at half time and I could use the five minutes to read this document and take it up after the recess.

Mr. Chairman: We are recessed until 25 to 5.

H 88 to follow

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M.S.

[Mr. Chairman): With

with all of the papers that pour forth from this building, if we want something in five minutes it's a change. However, we have it now and Mr. Moore will circulate some copies to the committee members.

Mr. Shibley: Mr. Gathercole, your counsel has now produced a memorandum for file dated September 15, 1971. I'd ask you first who compiled this memorandum?

Mr. Gathercole: This would be compiled by Mr. Easson, the Secretary of the Commission.

Mr. Shibley: And is this is a note of discussion which transpired at a Commission meeting of that date?

Mr. Gathercole: Yes, it would be.

Mr. Shibley: May I ask that that be made the next exhibit, please?

Mr. Chairman: Exhibit 39.

Mr. Shibley: Now, Mr. Gathercole, would you like to explain its contents to the members of the committee?

Mr. Gathercole: Well, Mr. Shibley, it obviously modifies some of the observations I've made before and the direction of the questioning in which you were proceeding, but it does say here: ~~THE ASSISTANT GENERAL MANAGER~~

" The Assistant General Manager - Finance had requested this subject be an item for discussion at today's meeting. -- "

That is September 15, 1971.

" -- as he had been approached by a former member of the staff with a proposal that could possibly provide the funds for the Commission's new office building, planned for the southwest corner of University Avenue and College Street. Mr. Banks was absent today but the Assistant General Manager - Services -- "

That would be Mr. Sissons.

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(Mr. Gathercole)

" -- reported briefly that such a proposal had been received and he was enquiring as to whether it would be in order to proceed with discussions with this party for the financing of the head office building. He was authorized to do so. It was also stated that a decision on whether to proceed with the new building would probably be made before the end of this year and if so, the construction work would be initiated during the spring of 1972. It was also agreed that if any financing plans for this project came to the attention of the Commission from whatever direction, that it would be prepared to consider and study them. "

Mr. Shibley: Thank you, Mr. Gathercole. I couldn't agree with you more. This certainly sheds new and different light on the documents that had been produced to this moment, and to the extent that my questions to this point involve Mr. Banks and Mr. Sissons, ~~and~~ any suggestion of withholding information from members of the Commission, I would like the record clear, that this document clearly exonerates them from any such omission and, rather, indicates that, in a very responsible way, Mr. Banks did table it for Commission consideration.

The memorandum, Mr. Gathercole, is of further interest to me. Do you have a ~~summary of the~~ memory of the discussion referred to, referable to carrying forward the new ~~bank~~ building before the end of 1971, or during the spring of 1972?

Mr. Gathercole: No, I don't recall what transpired during that period of time, as to the consideration of the various financial alternatives. I know they were all being considered.

Mr. Shibley: When the memo references a decision to proceed with the new building, on what set of plans was the committee deliberating at that point in time?

Mr. Gathercole: I would have to say any set of plans, whatever set of plans happened to prove to be the most effective

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(Mr. Gathercole)

in meeting Hydro's requirements. I don't think it referred to any specific set of plans.

Mr. Shibley: So, to be clear, this is not necessarily a reference to the plans which had been deferred in 1969, is that correct?

Mr. Gathercole: I would say that they could conceivably be included in that, but not only those plans.

Mr. Shibley: Was it a fact that as late as September 15, 1971, the Commission itself was undecided as to whether you would proceed with any building?

Mr. Gathercole: I would say the Commission was hopeful that we would be able to get ahead with the building, but in the light of the uncertainties that always lie ^{ahead} we had no guarantee the building was going to come to fruition.

Mr. Shibley: Members of the committee, that's as far as I intend to take ~~the question as to whether~~

Tape H 89 follows

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fvk

(Mr. Shibley)

~~.....Members of the committee, that's all far as I intend to~~
the questioning as to financing at this time. We will return to it very much later in the ~~also~~ chronology of events. I want to return now to the subject which was introduced by the content in the memorandum, which is exhibit 34. You might look at that with me, Mr. Gathercole. That's the memorandum of March 9, 1972. Do you have it in front of you?

Mr. Bullbrook: No, he doesn't.

Mr. Gathercole: No.

Mr. Shibley: Mr. Gathercole, I want you to project back to March 9, 1972, at which point in time you recorded your then thinking in this memorandum referable to the fact that Mr. Candy was assembling proposals from prospective developers and, also, referencing the statement: "I should like to make a submission to the Premier, and other members of the cabinet early in April." Did you, ^{at or} about that time, have any communication with the Premier or with cabinet referable to the new head office building and its mode of financing?

Mr. Gathercole: Mr. Chairman, to the best of my recollection, I had, and I believe it was at the opening of the Pickering Nuclear Station, ^{I made} an aside to him mentioning that we were receiving, Mr. Candy was receiving, ~~some~~ various proposals and that we ~~would have~~ intended to proceed with the construction of our building. So he discussed the financing matter with me and suggested that inasmuch as I was going on a trip to explore the money market in Japan with the Hon. Darcy McKeough, who was Treasurer at that time, that I should discuss how it should be financed. On that trip, in late April, of that year, I raised the question with Mr. McKeough as to whether the province felt that, in the light of our heavy borrowing, we should give relief to the raising ^{of} money on the provincial guarantee for the financing of our ~~an~~ office building. I mentioned that this had been indicated to us as being desirable by his predecessor and by other treasury officials, and by our own treasury officials in Ontario Hydro. He said to me that he

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(Mr. Gathercole)

felt that ^{if} we were proceeding with the construction of the office building that we should find some other way rather than to add to the burden of borrowing on Hydro bonds guaranteed by the province.

Mr. Shibley: I'm having produced to you a letter dated May 16, 1972 from yourself to the Hon. William Davis, Premier of Ontario.

Mr. Chairman: Exhibit 40.

Mr. Shibley: I'm sorry, Mr. Chairman, this is beyond the point of having made duplicate copies for all members but I will read it. We have got them. They will be made available in a few minutes.

Mr. Chairman: Would you repeat what that was again?
was
t ~~not~~ a memorandum from -

Mr. Shibley: I'll read it for everyone's information.
This is a letter dated May 16, 1972. I'll read it verbatim.

// The Hon. William Davis,

Premier of Ontario,

Parliament Buildings,

Queen's Park,

TE Toronto, Ontario.

Dear Mr. Premier:

On my trip to Japan with the Hon. Darcy McKeough and company, I reviewed with him the desirability of us proceeding as soon as practicable on the construction of the Ontario Hydro office,.....

(Tape H90 follows)

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PLG

(Mr. Shibley) *quoting*

~~with him the desirability of its proceeding as soon as practicable on the construction of the Ontario Hydro Office building.~~ I pointed out that it was estimated that against renting office space, the occupation of our own office facility would enable Hydro to save about one million dollars a year, aside from the dis-economies associated with trying to operate an organization so widely scattered. Darcy indicated that he was receptive and suggested that we start the governmental procedure ball rolling, by having the Ontario Department of Public Works review it. I would be very pleased to have your advice. I would also be glad to have your advice as to whether there are any further developments on the extra-high voltage transmission line from Nanticoke G.S. to the Pickering G.S.,
Yours Sincerely, G. E. Gathercole."

And then there is an asterisk,

"Ministry of Government Services"

which is noted as --

Mr. Gathercole: The Department.

Mr. Shibley: Referring back up ^{to} Ontario

Department of Public ~~Works~~ Works. Now, Mr. Gathercole, does that letter refresh your memory as to the events of May 16, 1972 and ~~the~~ preceeding that date?

Mr. Gathercole: Well, ^{this} this is the letter that I did write to him yes.

Mr. Shibley: Were the circumstances outlined in your letter as set forth, ~~in terms~~ ^{the language} of your communication with Mr. McKeough?

Mr. Gathercole: Yes.

Mr. Shibley: Now what ensued -- before I go on, was there any other form of communication, other than the two to which you have made reference, the oral communication with Premier Davis on the occasion of the Pickering opening, and this written communication of May 16?

~~Mr. Gathercole: Not that I have any recollection of~~

~~Mr. Gathercole:~~

[Mr. Gathercole: Not that H 90-2

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PLG

I have any recollection of, Mr. Chairman.

Mr. Shibley: In what manner did ~~you~~ you follow up with respect to this communication with Premier Davis?

Mr. Gathercole: There was no further follow-up. I believe I did - I spoke and from time to time ^{and} informed the Hon. Mr. Auld that we were proceeding with our plan, but I felt that we should proceed and this is what we were doing under the responsibility that we had.

Mr. Shibley: So just to be clear, Mr. Gathercole, do I take it that you were acting upon the advice and direction given to you by Mr. McKeough during your trip to Japan to get on with the job?

Mr. Gathercole: Yes. That was the implication.

Mr. Shibley: And this communication with the Premier was such that —

Mr. Gathercole: As to the financing of it.

Mr. Shibley: Yes. And this communication with the Premier, ^(was) by way of advice to him as to what was going on.

Mr. Gathercole: That was the advice to him that we were proceeding.

Mr. Shibley: Subsequent to May 16, 1972, other than advising Mr. Auld of your intention to proceed, did you communicate with any member of Cabinet, ~~and~~ and of course the Premier would be included, respecting the decisions you were taking during the course of that ~~that~~ year, respecting your new head office building?

Mr. Gathercole: No.

Mr. Shibley: And in particular, with respect to the decision as to whether you were going to do the transaction by a lease-purchase arrangement, or otherwise, did you have any communication with any member of Cabinet respecting that decision?

Mr. Gathercole: May I ~~just~~ just make one - whether it is a qualification I am not just quite certain at this point, but when the Hon. George Kerr was Minister of Energy ^{and} Resources ^{Management} and Environment, I did advise him that ~~we~~ in the early stages, ~~that~~ we wished to get on with the construction of our building, ~~but~~

H-91-1

(Mr. Gathercole)

~~we in the early stages that~~ we wished to get on with the construction of our building. But with that exception the answer is those were the only ministers with whom I had communication.

Mr. Shibley: And as a matter of topic of conversation, you assumed not to discuss with them the policy decision as to whether or not you should do this type of transaction?

Mr. Gathercole: It was a matter, I thought, of clearing the financing method through the treasury, with whom ~~we are~~ all our borrowing is coordinated. I considered that if we had an indication from them as to what type of financing ~~that~~ we should undertake, and if ~~the~~ we were agreed that we shouldn't rely upon the traditional sources of borrowing for our funds, then the lease purchase route would be the one upon which we should proceed.

I presume, Mr. Shibley, you are dealing with the period up until the time of July 1972.

Mr. Shibley: That's right. And I was just going to complete the picture while ^{we} were on the subject matter by asking you to look at a letter dated July 21, 1972, from yourself to Mr. James Fleck, chief executive officer, Office of the Premier, which reads:

"Dear Jim:

Attached is a copy of an announcement we propose to make regarding the new office building at an early date. We wish to ensure that this action is not in conflict with the Premier's judgment."

You remember writing that letter?

Mr. Gathercole: Yes I do.

Mr. Shibley: Now that was ~~as~~ at a date subsequent in point of time to the commission's decision to go ahead and enter into the agreement with Canada Square?

Mr. Gathercole: That is true.

Mr. Shibley: May we have that letter and the accompanying press release, which is dated July 21, 1972, made the next exhibit, Mr. Chairman?

H-91-2

Mr. Chairman: What is the date of the letter?

Mr. Shibley: The date of the letter is July 21, 1972.

Mr. Chairman: That is the same date as the press release?

Mr. Shibley: That's correct.

Mr. Chairman: That is Exhibit 41.

Mr. Shibley: ^{And} ~~When~~ then ~~_____~~

Mr. Chairman: ^{We are} Making copies of this now too ~~_____~~

Mr. Shibley: We have them made, but they are stored elsewhere. We are trying to save ourselves carting some of the cartons. ~~that~~ I also reference ~~the~~ ^{his} letter dated August 1, 1972 which is marked "Confidential" directed to Hon. James A.C. Auld, Minister of the Environment.

"Dear Jim:

No date has been set for the attached announcement and therefore this should be kept strictly confidential."

Yours very sincerely."

Did you write such a letter?

Mr. Gathercole: Yes, I did.

Mr. Shibley: I'll have a copy of this made as Exhibit 42, Mr. Chairman.

Mr. Chairman: Exhibit 42.

Mr. Shibley: And finally, again by letter of August 1, 1972, a letter to Dr. J.K. Reynolds, ~~Deputy Provincial Secretary for Resource Development, Parliament Buildings, Toronto, Ontario.~~

~~"Dear Keith:~~

~~No date has been set for the attached.~~

H-92-1 follows

H-92-1

~~Dr. I. K. Roy~~, Deputy Provincial Secretary for Resources
Development, Parliament Buildings, Toronto, Ontario:

No date has been set for the attached announcement and therefore this should be kept strictly confidential".

Mr. Gathercole: Yes, I did.

Exhibit 43, please, Mr. Chairman.

would be a ~~memoranda~~ memorandum similar to that accompanying the letter to Mr . Fleck. Is that correct?

one to Mr. Auld and Dr. Reynolds might have been a little more embellished, but of that I am not sure.

Mr. Shibley: I don't have an embellished —

Mr. Gathercole: ^{But it seems to} ~~It may well be~~ the same. 

Mr. Shibley: I don't have an embellished copy, so

Mr. Gathercole: It may well be.

Mr. Shibley: All right. ~~These~~ - do I gather,

Mr. Gathercole, that the last three exhibits would be the only communications effected as between you or ~~any~~ anyone on behalf of Hydro with anyone representing government?

Mr. Gathercole: Yes, and they were a few of the

德意志民主共和国广播电台

Mr. Shibley: And they were after the event of the

decision already made?

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Mr. Gathercole: They were after the event, yes.

Mr. Shibley: Members of the committee, those are all the questions I intend to ask respecting exhibits tabled to date and, subject to your further questions in these areas, I myself would move to another topic.

Mr. Bullbrook: I would like to ask —

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: I wanted to relate to financing ~~of~~ ^{a bit} ~~with~~ Mr. Gathercole, and then go on to Exhibit 34 with some additional questions. I understand the main thrust of your feeling in connection with the possibility of Hydro financing the adventure itself, was that you felt the heat on your ^{borrowing} ~~side~~ was such that the additional going to the market of \$30 or \$40 million would have an adverse effect on your financial position?

Mr. Gathercole: \$45 million.

Mr. Bullbrook: Yes.

Mr. Gathercole: Yes, that was the feeling; and, with this, we might be carrying ^{this to} ~~the~~ development of some other fields.. Our treasury people were exploring other lease-back arrangements in respect to not only office buildings but equipment, because we felt if we ever got in a tight spot to finance our programmes, then we might have to resort to some of ~~this~~ these things.

Mr. Bullbrook: Yes. Could you tell me, as Chairman of the Commission, what your present bond indebtedness would be approximately?

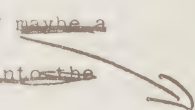
Mr. Gathercole: Well, it's a very sizable amount, ~~about~~ I would say, offhand, about \$4 billion or thereabouts — \$3½ billion.

Mr. Deans: Somewhere between 3½ and four?

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Mr. Gathercole: It is a large amount, yes.

Mr. Bullbrook: An ^{an} additional borrowing of about \$40 million would represent an increase of about one per cent of your total bonded ~~indebtedness?~~ ~~indebtedness?~~

Mr. Gathercole: Yes, relatively, it isn't large, but it is just a question of, you know, adding another \$45 million on to what you are already doing. You have to be in the market for one additional loan or half an additional issue in order to take care of this. And if you do it for that, what about some of the other things? This represented an alternative, and we thought there ~~would be~~ ^{might} be some benefits ⁱⁿ proceeding with this. It's a view which ^{was shared} ~~was shared~~ by the treasury officials and ~~of~~ the province itself, because with them supporting Ontario Hydro's bond issues, which ~~are~~ represent borrowing in the order of \$600 million this year, but in the future ^{will grow} ~~will grow~~ much more if we are going to continue with our nuclear programme, which we think we have ^{to} ~~and~~ which we believe is imperative. And that programme, ~~was brought in~~ ^{carried} because nuclear plants are capital-intensive, carries into borrowing ~~in the order of maybe a billion dollars a year. In the late 1970s or into the 1980s~~ 

(Tape H-93 follows)

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(Mr. Gathercole)

maybe a billion dollars a year in the late 1970's or ~~the~~ the 1980's. Now, you say, "Well, what difference does \$45 million make?" It's just that extra amount.

Mr. Bullbrook: You make it easy for me to inquire of you, because you anticipated my next question. That's exactly what I was going to say. I find it very difficult to understand, in the context of the significant financial operations of your Commission, that an increase of borrowing of your total indebtedness of one per cent would be such a focal consideration, in connection with your judgement relative to the ~~the~~ building of this building.

Mr. Gathercole: That's a point of view. It's one to which we don't subscribe. We do feel that ~~we are not going to~~ we may ^{be} obliged to move out into some of these new areas in order to assure us the capital that we need to meet our requirements. But this is a judgement which is being exercised, and I think it's quite widely held. I understand your point of view, but it's a judgement that we are exercising. There was another ^{advantage} in going this route, as I have mentioned, that we don't look after the commercial property, ~~we don't~~ -- that wouldn't be our responsibility. We ^{have} ~~had~~ an arrangement for housekeeping where we think additional economies can be obtained. So, as a package arrangement it gives us what we need. The province has adopted this formula in a number of areas and ^{it is, that} ~~has~~ deemed this would be advisable. We deem it to be advisable and others have deemed it advisable to proceed with respect to the financing of our head office building.

Mr. Bullbrook: I want to relate, if I might, to the memorandum from Mr. Stewart to Mr. Dean where he talks about the possible fettering of direct financing by the bond agreement with Deutsche Bank.

Mr. Genest: Excuse me, Mr. Bullbrook, ^{Could} ~~doesn't~~ Mr. Gathercole have that in front of him?

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Mr. Bullbrook: Oh, yes. I'm sorry. What's that exhibit number?

Mr. Shibley: 38.

Mr. Bullbrook: 38?

Mr. Chairman: Mr. Moore, I wonder if ^{you} ~~he~~ could ~~give~~ give

Exhibit 38 ~~to Mr. Gathercole~~ to Mr. Gathercole.

Mr. Bullbrook: Before we get into this, I just wanted to relate back to a question that I put to you previously this afternoon. In Mr. Safrance's submission ~~to the Commission or to its administration~~ to the Commission or to its administration, you recall that he gave you the alternative proposition that the funds from New York would be available either directly to the Commission, or to the developer. And I drew an inference from the fact that he would make the funds available to the developer, that the prime consideration was the security made available basically by lease back or otherwise, of the Ontario Hydro-Electric Power Commission.

Mr. Gathercole: I wouldn't contest that.

Bullbrook

Mr. Bullbrook: But what I fail to grasp is, in

essence, how the lease back route minimizes the financial security position of the Hydro. By that I mean, when you enter into the borrowing of \$45 million it becomes an obligation of the Commission to repay it. How do you distinguish that from the contract ~~--- your counsel~~ ^{perhaps} doesn't, ~~perhaps~~ want me to pursue this line of questioning.

Mr. Genest: No, no. I am just concentrating.

Mr. Bullbrook: All right. Well, I'm just trying to get Mr. Gathercole to help me on the question of minimizing the borrowing position of ~~the~~ Hydro. When you enter into a contract to repay, doesn't that affect the total financial obligation of the Commission itself?



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Mr. Gathercole: The rental or term payments that
Hydro is required ^{to make} under the lease purchase arrangement ~~to~~
~~constitute~~ constitute an obligation of Hydro. There's no question
about it. And they are financed out of the revenues that Hydro
obtains through the sale of its electrical energy. On the
other hand, it doesn't mean another issue of Hydro bonds in the
market. And one of the questions always in the minds of many
borrowers, whether it's the Province ~~or whether it's essential~~
~~to state whether you're having too many~~

Tape H 94 follows

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5:15-5:20 pm

C.B.

(Mr. Gathercole)

~~or when it's the province of whether~~ ^{or} ourselves, is whether you are having too many issues on the market. So this is the relief that we obtained. It's a diversification of the vehicle or instrument by which we raised money to finance the capital programmes.

Mr. Bullbrook: Don't people who are making money available to you look to the total obligation then outstanding by the commission?

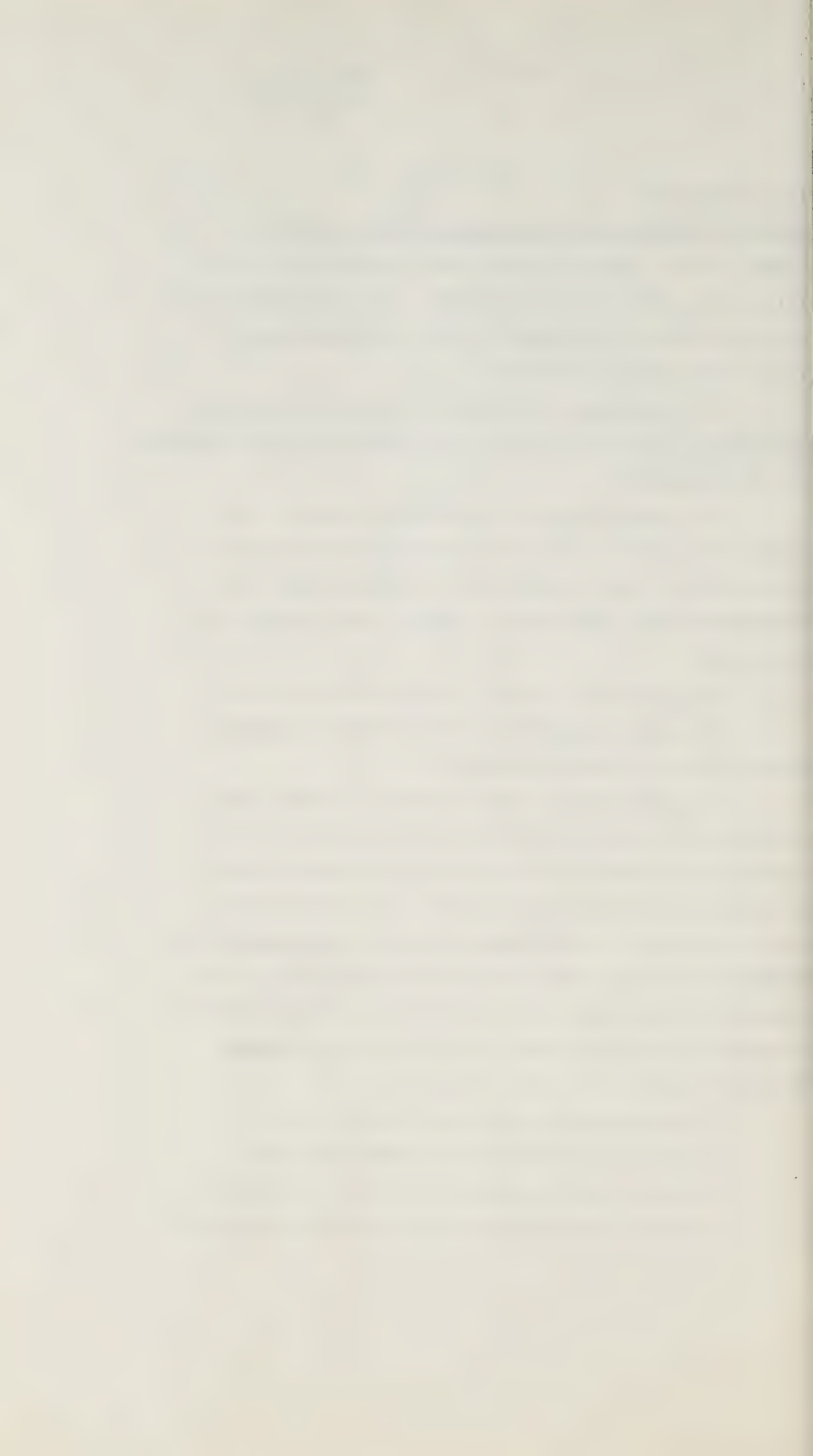
Mr. Gathercole: The sophisticated ones do. But other people, that is, the person who is buying your bonds, he says, "Well, I just bought an issue of Hydro bonds last month, ~~and~~ I don't know whether I want to take another one this month."

Mr. Bullbrook: I see. We we won't pursue that.

Mr. Gathercole: This is the message we ~~receive~~ receive from our investment dealers.

Mr. Bullbrook: I want to refer, if I might then, to exhibit 38, where Mr. Stewart is giving a reply to Mr. Dean as to the restrictions on direct borrowing by Hydro in connection with this development. As I understand it, sir, on page two, he ~~is replying~~ ^{replies} to Mr. Dean, ~~he replies~~ "Yes, ~~that~~ there would be restrictions" and he says ^{that} "under the agreement of the seven per cent, 1969 loan, that ^{the} consortium represented by Deutsche Bank, would participate, ~~he says~~ ^{he says} he uses the words, if I may read ~~me~~ them:

"The agreement provides that Deutsche Bank will hold and exercise as trustee the rights arising from the guarantee given by the province as well as rights arising from any other security."



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C.B.

(Mr. Bullbrook)

Now, ^{do} I understand by that that ~~was~~ any additional issues or any borrowing of any nature by ^HHydro, after the agreement with Deutsche Bank's principles^{al}, that Deutsche Bank participate^{al} in such additional securities?

Mr. Gathercole: I'm not altogether sure of the intent of your question. But the Deutsche Bank participates pari passu with other instruments of bonds in ^HHydro assets, in aggregate. But they wouldn't have any prior position.

Mr. Bullbrook: No, they wouldn't have any priority.

Mr. Gathercole: No.

Mr. Bullbrook: But they would participate in the security.

Mr. Gathercole: They would participate in the general security; and that is, I think, intended to avoid any dilution of the assets.

Mr. Bullbrook: Was that of any consideration to the commission eventually coming to that conclusion?

Mr. Gathercole: In the method of financing it there certainly established that ~~there~~ were very serious limitations on the type of instrument we could employ to raise the money, if we weren't going to go the conventional way; that is, ~~to~~ borrowing on ^HHydro bonds, guaranteed or not guaranteed by the province.

Mr. Bullbrook: Fine. Now I want to now reconsider the question of exhibit 34, ~~if I can find it~~ That, you recall, Mr. Gathercole, was the memorandum ^{to} ~~from~~ Mr. Sissons from yourself, where you spoke of ^{and} and I'll quote again;

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C.B.

(Mr. Bullbrook)

" I should like to make a submission to the Premier and other members of the cabinet early in April."

During the course of my tenure in the assembly on many, many occasions the ^government has taken the attitude, ~~which~~ especially in connection with Hydro's significant borrowing, that the government had no control over Hydro; that it was autonomous. I believe, as a matter of fact, you ~~were~~ referring ^{ed} to ~~the Hydro Commission Act~~ ^{The Power Commission Act}today. Do you regard the commission as an autonomous vehicle? ~~Hydro's Commission~~

H 95 to follow

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M.R.

(Mr. Bullbrook)

~~Do you regard the commission as an autonomous body?~~

Do you feel an obligation under law to report to the Premier?

Mr. Gathercole: An obligation under the law?

I would say that there is an obligation to report to the minister and to the Premier on matters of major significance, yes. And these have in the past included a great variety of things, transmission line routes, pollution, nuclear power and many other things of that nature.

The commission, with respect to its buildings, has authority to proceed. It doesn't require the assent of the government to go ahead with ~~that~~ ^{those}. Now, mind you, Hydro is not going to proceed if there is a hostile environment. I mean, we are all on a basis of where we are in a periodic communication; we do try to keep the government ~~informed~~ ^{apprised} of what we are doing. We recognized, in putting an office building on the corner there, diagonally across from the Parliament Buildings ^{that it} ~~was something~~ ⁱⁿ which the government would have an interest. ^{There's} ~~No~~ question about that at all.

Mr. Bullbrook: Am I correct in stating —

Mr. Gathercole: And, therefore, we ~~have~~ ^{had} kept the

Minister of the Environment informed that we had to proceed. It had been recognized before, we had one set of plans prepared. The Prime Minister — if I might just make the point — the Prime Minister at that time stated that Hydro had full authority to go ahead ~~and that~~ However in the end, Hydro in responding to the ~~economic~~ ^{of} dictates and the economic conditions of that time, as well as the advice of the Premier, postponed it. We felt we had authority to proceed.

Mr. Bullbrook: Yes, I wanted to refer to Exhibit 6.

I don't think it's necessary that we refer it to you, but ~~you~~ ~~the minutes of~~ the ~~minutes~~ minutes of the meeting of Hydro, I don't have the date or the Exhibit in front of me — maybe we had better get it —

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M.R.

Mr. Chairman: We'll get it, Mr. Bullbrook.

Mr. Bullbrook: ~~May~~ We had better get it.

Mr. Gathercole: Are you referring to the one

of January 7th?

Mr. Bullbrook: January 7th of 1970.

Mr. Gathercole: Yes.

Mr. Bullbrook: I wonder if you would just read

that again for me?

Mr. Gathercole: "Commission meeting-January 7th."

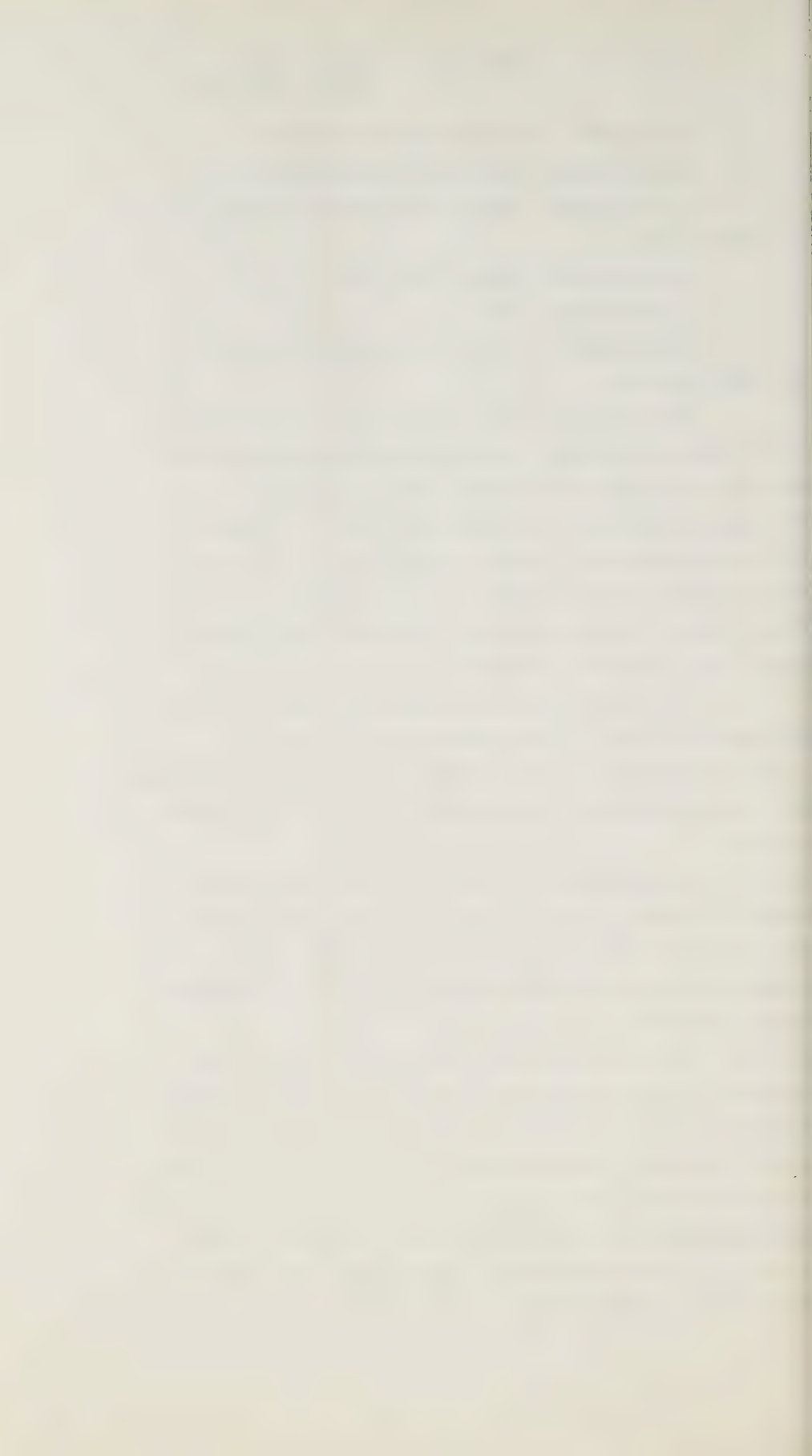
The Chairman reported that he had discussed the proposed new head office building with the Prime Minister and that Mr. Robarts had advised the commission to defer the start of its construction for a year, at which time it was likely that a decision could be reached. In this connection, the Prime Minister stated the province was also holding back on some of its construction projects."

Mr. Bullbrook: So that does support the position

that you have taken, that the government has the right to advise the commission as to major ~~new~~ projects, and the commission will follow the advice of government in connection with major projects?

Mr. Gathercole: I would say in the ~~general~~ general economic interest it will certainly take into consideration the government's guidelines, but that doesn't mean that the commission responds to some decision that is made, necessarily, by the government.

I mean, the Hydro is a body which is set up as a commission to run its day-to-day affairs ~~in~~ in its own way and it does. It has been very successful in doing so. And, as I have pointed out before, we place orders for \$500 million a year and without direction from anyone, and most of these orders are placed after recommendations have been made by our technical staff. We don't go into the details of these matters. We have a large and competent technical staff. They work out the costs.



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M.R.

(Mr. Gathercole)


They work out the comparisons and alternative proposals, and they come up with an evaluation.

Now we in the commission then sit on that.

Mr. Bullbrook: I've heard you make that response on several occasions. And I agree with it entirely, but I do see a distinction between the normal day-to-day operation of the Hydro-Electric Power Commission and the building of a new head office building. Do you see such a distinction?

Mr. Gathercole: No, I don't see that. I don't see ~~the~~ distinction.

Mr. Bullbrook: You regarded the building of the new head office building as a normal routine adventure on the part of ~~the~~



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PLG

(Mr. Bullbrook)

~~and office building is a normal routine adventure on the part of~~
the Commission?

Mr. Gathercole: I don't regard it as a normal construction project such as the planning and design and completion of a regional building. ~~Any one is.~~ No one is. ~~I~~ I don't care what organization it ^{is} ~~was~~, whether it ^{is} ~~was~~ Ontario Hydro or any other organization, ~~it's~~ obviously you can't be indifferent to a building which is erected diagonally across from the Parliament buildings. There is no question about that. On the other hand, we had authority to proceed. The building had been deferred and, under the general assent, we went ahead. ^{But} There wasn't any dictation, there wasn't any direction. It was our decision.

Mr. Bullbrook: The decision of the Commission?

Mr. Gathercole: Yes.

Mr. Bullbrook: ^{You} ~~we~~ will eventually be getting to the meeting in July, I suppose, Mr. Shibley.

Mr. Shibley: Yes we will.

Mr. Bullbrook: ^{where we} ~~will~~ discuss the foundation for the ultimate decision by the Commission. I don't want you to feel that I am attempting to elicit information from you for any ^{nefarious} ~~various~~ purpose.

Mr. Gathercole: Oh no. I am being frank and ~~fr~~ frank.

Mr. Bullbrook: All right. I want to know several things: ^{who} ~~who~~ makes policy at Hydro? I am very interested in this, because I want to be frank with you in saying that I ~~am~~ am under the impression that the Commission doesn't make policy, that they ~~take~~ basic policy decisions are made by the Administrative staff and to some extent, rubber-stamped by the Commission.

Mr. Gathercole: That isn't what our management staff ^{is} ~~is~~ not by any means, I can ~~am~~ assure you of that. We are certainly rubber-stamp at all. In any large organization ^{Mr.} ~~Mr.~~ Bullbrook, you have studied a number of these large organizations ^{there} ~~there~~ is an evolution of matters from the lower ranks of the organization right through to the top. People try to make an artificial distinction

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Mr. Gathercole)

H 96-2

between what is policy and management. Even some ^{of our} people have
endeavoured to do so in the past. There isn't any distinction.
There isn't just a separate line. That is policy, that is management.
Because our managers are working on policy formulations. When I
was Deputy Minister in the government, I was working ^{on} ~~in~~ policy. I
was evolving, formulating ^{policy.} I didn't make the decisions; somebody
else made them. But I was ~~making~~ helping to make policy. It is
a mixture of the two. We make policy and we decide policy. That
is what we do, but we ~~make~~ make policy and management makes
policy.

Mr. Bullbrook: You see, one of the ~~the~~ problems I have
is that in your evidence yesterday, and I questioned you about
this, you said there was an established policy that as trustee for
the pension fund it would be inappropriate for you to utilize the
funds for any undertakings by the commission, and yet, since that
time we have had three more exhibits wherein your administrative
staff talks about the feasibility of utilizing that fund. I
want to refer again, if I might, to the exhibit that you have before
you, Exhibit ~~number~~ 38. Mr. Stewart ~~regxxxxxx~~ goes into great
detail as to ^{legal} the rights of the Commission to use the funds. ~~maxim~~
~~exhibit~~

Mr. Gathercole: Up to a point, to 10 per cent, which ~~is~~ would
^{to finance the building.}
~~adequate~~ with our pension fund of today, ~~adequate with the master~~
~~building.~~

Mr. Bullbrook: Yes, I realize that, and the exhibit
speaks for itself in that respect. My questioning doesn't involve
your rights or limitations in connection with the fund; it involves
the question of policy. If there is ^{an} established policy that you
wouldn't use the funds, why are we having so many of your senior
administration discuss and evaluate ~~more~~ more than that, analyze
the possibility of using the fund?

~~Mr. Gathercole: No, there is no...~~

Tape H ~~96-2-11~~ 97 follows

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5.30-5.35 p.m.
M.F.

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Bullbrook
(Mr. Gathercole)

~~and evaluate, more than that, and the possibility of
using it.~~

Mr. Gathercole: No door is ever closed. They are considering a variety of alternatives by which we can finance and secure the realization of this administration building, and they quite properly ^{are} not excluding the possibility of using the funds vested ~~in~~ for pensions. In my judgment I think it is unwise for any organization to commit its own pension fund, upon ~~from~~ which its employees depend, for purposes which ~~it would~~ are within the scope and operation of that company or corporation itself.

Mr. Bullbrook: As I said yesterday, I entirely agree with that, especially since you are the statutory trustee of ^{that} ~~this~~ fund.

Mr. Gathercole: Well, there is a board of trustees.

Mr. Bullbrook: Well, ~~I want to get to~~ and I am going to close off. I realize I am taking a lot of the committee's time, but I want to get to the meeting at Pickering where you spoke to the Premier about the method of approach to the building.

Can you recall the date of that?

Mr. Gathercole: I think it was February.

Mr. Bullbrook: February of '72?

Mr. Gathercole: February of '72, yes. That is as I recall it. ^{it was} ~~at~~ that meeting; ^{it} ~~there~~ may have been another meeting, but that is really as I recall it.

Mr. Bullbrook: As I understand your evidence ^{that} ~~it was~~ given to Mr. Shibley you at that time advised the Premier that you were in liaison with several developers in connection with the proposals for the development of the head office site?

Mr. Gathercole: Yes.

Mr. Bullbrook: Did you name those developers to the Premier?

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Mr. Gathercole: I have no recollection of naming them. There were several of them, but I have no recollection of naming any particular developer.

Mr. Bullbrook: Had you advised any member of government, prior to the formal information that was given to Mr. Auld, Dr. Reynolds and others, that Canada Square had been the successful proposer?

Mr. Gathercole: No, I never did.

Mr. Bullbrook: At any time did you ever discuss with the Premier that Canada Square was one of the companies with which you were dealing in connection with the possible development of the head office site?

Mr. Gathercole: At one time I mentioned that our people had been up to see the OISE building and that they had been quite impressed by it.

Mr. Bullbrook: ~~At one time~~ Was that at the Pickering discussion?

Mr. Gathercole: No, I think that was at an earlier time. That is my recollection.

Mr. Bullbrook: You might have related that to us previously, I don't recall that you had had a former discussion with the Premier.

Mr. Gathercole: No, I wasn't asked, but I had had at an earlier time not a discussion, but I mentioned that we were proceeding, and this would go back to June or August of, I guess, ~~1971~~ ^{and} that we were anxious to get ahead with our building.

Mr. Bullbrook: Had you advised the Premier that you had attended at the OISE site?

Mr. Gathercole: I hadn't mentioned anything of that kind.

Mr. Bullbrook: You hadn't?

Mr. Gathercole: As far as I am aware, I didn't mention that. It is conceivable that I might have mentioned ~~that~~ some

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(Mr. Gathercole)

of our people had been there, but I have no recollection of having done so.

Mr. Bullbrook: Could you tell me, was there ever any response from the Premier as to the qualities and abilities of Canada Square?

Mr. Gathercole: No. None whatsoever.

Mr. Bullbrook: Those are all the questions I have, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Bullbrook. There are other members of the committee who have indicated they wish to speak—Mr. Deans, Mr. Gaunt and Mr. William Hodgson^{and}, ^{Mr. Renwick,} ^{you} wish to be added to the list? Mr. Deans?

Mr. Renwick: Yes, Mr. Chairman.

Mr. Deans: Thank you, Mr. Chairman. There are a number of points that I want ~~to ask~~ to ask questions about.

I want, first of all, to ask in reference to Exhibit 18, the memo from Mr. Dean to Mr. Smith, had ~~-----~~

Mr. W. Newman: Mr. Chairman, may I suggest that if ^{we} ~~they~~ are going to refer to exhibits, that they ^{witness} ~~do not~~ have a copy so ^{he} ~~we~~ will know what ^{we} ~~they~~ are talking about?

Mr. Deans: My understanding was that he received ^{them} copies at the time we were given ^{is that} ~~is that~~ not true?


Mr. W. Newman: Yes, but ^{they were taken} ~~they were taken~~ away.

Mr. Genest: ^{He} ~~He~~ didn't ^{I keep} ~~I keep~~ them.

Mr. Deans: Oh, ^{they take them away} ~~they take them away~~; that is a shame.

Well, what I am going to ask doesn't really require you to read ^{it}. I will read it to you, ^{this is} ~~one~~ section. It is the third paragraph.

~~What~~ I am trying to find out is from where Mr. Dean would derive specific authority to ~~-----~~ go ahead, as he says ^{so} "alone or with other people" to undertake a broad ~~study of the whole -----~~



Tape H 98 follows



H-98-1

(Mr. Deans)

~~to proceed ahead, as to go ahead he says, alone or with other~~
~~people to undertake a broad~~ study into the whole question of a new building."

Mr. Dean refers to this in this letter of August 18, 1971 which ^{he} he says, as I have quoted to you in the third paragraph, the last sentence.

I wonder if you can tell me, where would Mr. Dean get that authority?

Mr. Gathercole: Well, Mr. Dean ^{had it} delegated to him. I believe that in this ~~in this case~~ ^{in this case} Mr. Sissons asked Harold Banks to have somebody examine into it and then Mr. Banks would direct Mr. Smith to have somebody do it, I think, Wasn't this in connection with another question that was raised the previous day? And this is along the lines of the authority that would flow.

Mr. Deans: In this particular letter he was referring specifically to what he considered to be the least costly method of financing the building, that of using the pension fund. And it appears from previous

Mr. Gathercole: Now, just a moment, Using the pension fund would the be the least costly method?

Mr. Deans: He says; ~~xx~~

"As you are aware, I still feel that one of the least costly methods of financing the building without disadvantage to either Ontario Hydro or its employees would ^{be} to arrange a loan through the pension fund."

Okay? I'm only quoting him.

Mr. Gathercole: Well, ~~it~~ all right.

Mr. Deans: I'm not even going to ask for your opinion of that.

Mr. Gathercole: I'd like to give it.

Mr. Deans: Oh, no doubt. But you can give it in a moment because what I want to find out is if, in fact, it was a policy of Hydro, and I am ^{now} calling on what Mr. Bullbrook had said previously, ^{if} it was a policy set down by the commission that the pension fund

qH-98-2

(Mr. Deans)

not be used for purposes of internal financing. Then would it not necessarily ~~then~~ flow ~~in~~ from that that any change in this policy or any authority to undertake a specific study in that regard would have to come from other than simply the immediate superior of the person writing the letter?

Mr. Gathercole: Yes. Change ~~on~~ policy of that nature would originate in the senior levels of our financial division, and be passed up in the form perhaps of a recommendation ~~to~~ the commission.

Mr. Deans: ~~Would it not normally require some form of recognition from the commission that they were even amenable to a change in the policy which had been adhered to over the years to authorize the conducting of a major study into the whole matter of the financing of the new building through the use of the pension plan?~~ ~~Let me~~ let me put it another way: If it requires the authority of the commissioners, and if in fact the commissioners have over the years expressed their concern about ~~that particular use being put on the~~ fund being put to that particular ~~internal~~ financing use, would it not seem rather ridiculous for people at the lower level to continue to investigate the matter, knowing full well that the commissioners had a stated policy in regard to it?

Mr. Gathercole: I don't think so, Mr. Deans. It is an organization in which we endeavour to encourage the creation of new ideas, new methods, new economies, ~~new~~ better ways of doing things. ~~I think we have~~ Nobody tells us that you ~~have~~ have got to have a fixed structure all the way through and everybody conforms in the identical way. That isn't the way we proceed. We want people to be creative in Hydro. We want them to be venturesome, to be enterprising, to be coming up with new ideas of how we can do things better.

Mr. Deans: Well I think, I am pleased to hear that because I

Mr. Gathercole: May I make the other point that I was making?

H-98-3

Mr. Deans: Yes, please do.

Mr. Gathercole: ~~What~~ⁱⁿ connection with the pension fund, we think that the pension fund ought to be operated at arms length and, therefore, we do not think the pension fund should accept a lower rate in order to facilitate the construction of the building. ^{on which} This would have been a very easy course/for us to proceed.

Mr. Deans: Accept a lower rate, you said?

Mr. Gathercole: To take a lower rate, yes.

Mr. Deans: But that is not necessarily what would have occurred.

Mr. Gathercole: ~~With~~^{With} certain implications.

Mr. Deans: The reason I asked the original question was it appears that Mr. Dean was given the authority, or someone at least was given ~~the authority to~~

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M.S.

(Mr. Deans)

~~the person I asked the original question was it appears that~~
~~Mr. Deans was given the authority, or someone at least was given~~
the authority, to further investigate the possibility of using
the pension plan. ~~the~~

Mr. Gathercole: No, he was given authority and
directed to make studies.

Mr. Deans: Okay. Then, Mr. Stewart ~~-----~~

Mr. Gathercole: Nobody's going to lay out a set of
guidelines and say, "Well, it has to be here and here and here."
You don't do that.

Mr. Deans: Okay. Well, Mr. Deans specifically stated
that he felt that he would have required additional authority.
And he got it.

Mr. Gathercole: Presumably he got it.

Mr. Deans: Okay. He then proceeded ^{to} ~~and they~~ set out
in the document, Exhibit 38, some fairly conclusive figuring of
the extent of the pension fund; the amount that might be borrowed;
the projected growth of the pension fund; and the fact that Hydro,
~~would be prohibited~~ by law, would not be disentitled from using
the moneys for a purpose such as that of the building of a new
building. It even goes as far as to say, in conjunction with an
opinion which had been received ~~from~~ ^{on} from the auditors ~~on~~ June 28,
1966, that, ~~the study should be continued to see the extent~~
~~cautions~~ cautions set out in that study, which were cautions in
regard to interest rate, and other matters, should be continued, and
~~the~~ should, in fact, be paramount in the thinking of Hydro. But
it does point out that, in fact, this would be a possible source
of financing. Was it considered by the Commission in the light
of the October 25 memorandum, Exhibit 38, as a possible means of
financing the ~~new~~ building to be owned wholly by Hydro? Was it
specifically considered?

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M.S. .

Mr. Deans: Well, the reason I ask is because in at least three of the exhibits before us, perhaps more than three or four of the exhibits before us maintenance is referred to as a major contributing factor. It's specifically referred to, and in one, in fact, seems to be the only one from which ~~where~~ financial benefit can flow.

May 24/73
5:40 - 5:45 pm.
M.S.

Mr. Gathercole: Well, you are asking me my opinion, and I don't think it is the major factor, no. It is a factor, but not necessarily in ~~my~~ my mind ^{the} major factor.

Mr. Deans: Can you tell me whether I assume, ~~in~~ in the new contract, that ~~the~~ maintenance is one of the items that will be assumed by Canada Square?

Mr. Gathercole: Yes.

Mr. Deans: Can you tell me whether this will result in a decrease in the numbers of persons employed by Hydro?

Mr. Gathercole: I don't think it will result in any decrease, because our staff is expanded^{ing}. I don't anticipate any decrease; We hope, however, that out of it will come some economies.

Mr. Deans: Do you believe that it will result in ~~the~~ decrease ⁱⁿ the numbers of persons employed in the maintenance areas of Hydro ⁱⁿ the head office?

Mr. Gathercole: I would say there wouldn't be any

~~There would be no decrease in the number of persons employed in the maintenance areas of Hydro in the head office.~~



Tape H 100 follows

May 24/73

5:45-5:50 pm

C.B.

Mr.-Gathercole)

(Mr. Deans)

~~the numbers of persons employed in the maintenance means of the building in the head office.~~

~~Mr. Gathercole: I would say there wouldn't be any~~
decrease in the numbers ~~because~~ for the reasons I have mentioned ~~and~~ and that does raise ^a question in my own mind.

Deans.

Mr. ~~Gathercole~~ It raises one in mine too.

Mr. Gathercole: ~~as~~ as to whether, when ~~the~~ Canada Square operate the building, ~~there will be~~ certain people who are employed in the existing structure ^{will} find a place within that other organization. I would think that special arrangements would have be worked out to ensure this. I'm sure Mr. Sissons can explain this more articulately and more effectively than I. But we still will be operating the engineering building and the data processing building, so that there will still be some structure there.

Mr. Deans: I'm kind of ~~not~~

Mr. Gathercole: But that is a problem we will be ^e_{very} conscious of and naturally we would be making provision for it.

Mr. Deans: You would be making provisions for it?

Mr. Gathercole: Oh yes.

Mr. Deans: How would you make provision for employees, when in fact the contract for the building has already been signed and maintenance ~~and~~ general maintenance and specific maintenance, is now the responsibility of the developer?

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Mr. Gathercole: I don't think it was formally considered by the Commission that it would finance the cost of the building by way of ~~the pension fund~~^a withdrawal from the pension fund. Not specifically or formally, no. It was an alternative. It was always present.

Mr. Deans: I wonder — I may come back to that in a moment — if I can turn to another topic just for a moment. Am I correct in my recollection of much of the early testimony that you gave, that one of the major concerns, one of the major contributing factors ~~was~~^{in the} decision to go to a lease arrangement was the maintenance cost?

Mr. Gathercole: It was one of the elements in the package.

Mr. Deans: Would you consider it to be a major element?

Mr. Gathercole: I'm not sufficiently conversant[†] with the development business to say that it was a major one, but according to our advisers, one element that should be taken into account. But I'm sure that Mr. Sissons ~~can~~^{can} embellish[‡] ~~on~~^{advance —} this and ~~the~~

Mr. Deans: Let me ask you, in the presentation that was made by the management group to the commissioners[†] and I assume there was a presentation. Am I right in assuming that there was a presentation made?

Mr. Gathercole: Oh, yes.

Mr. Deans: Was the matter of maintenance costs and the savings from maintenance one of the major items discussed?

Mr. Gathercole: Not one of the major items discussed.

Mr. Deans: Well, the reason I ask is because in at least three of the exhibits before us, perhaps more[†] three or four of the exhibits before us[†] maintenance is referred to as a major contributing factor. It's specifically referred to[†] and in one, in fact, seems to be the only one ~~from which~~^{from which} financial benefit can flow.

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M.S.

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Mr. Gathercole: I would say there wouldn't be any



Tape H 100 follows

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5:45-5:50 pm

C.B.

Mr. Gathercole:

~~(Mr. Deans)~~

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of the building in the head office.~~

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when in fact the contract for the building has already been
signed and maintenance ^{and} general maintenance and specific
maintenance [,] is now the responsibility of the developer?

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C.B.

Mr. Gathercole: Well, there would be probably a two- or three-year period, a two-and-a-half-year period of adjustment, and as you know, ~~with some~~ ^{SOME} of these people in the housekeeping side of things, ~~that are~~ ^{they} are transient; ~~and~~ they are moving from one job to another. I ~~would expect that, and~~ I haven't any statistics on this, but I would expect that the turnover amongst such people is very great. But we would be making provisions for them and there is no question we would ensure that there would not be any hardships.

Mr. Deans: I assume you realize that you have a contractual arrangement that requires that you do just that?

Mr. Gathercole: Oh yes, in the new office structure.

Mr. Deans: NO, I'm talking about with your employees.

Mr. R. G. Hodgson: Mr. Chairman, we are entering into a contrasting ~~and~~

Mr. Chairman: Mr. Deans, ~~and~~ I don't know the relevancy and I don't want to rule you out of order, ~~because you know~~ ^{you} because you know where your line of questioning is taking you, ^{BUT} I would ask you to, in your own mind, ~~to~~ decide whether this is relevant to the issues that we are examining here?

Mr. Deans: Let me explain it to you, sir. ~~It is~~ ^{and} Throughout the documentation there is clear evidence that the cost of maintenance was a factor ^{and} and I consider, having read the documentation, a major factor ⁱⁿ in at least the thinking of those people below the level of the commission in determining what course of action to follow. I think that flows from a number of references throughout the documentation. It can only be a major factor, if in fact ~~it~~ there can be a saving, ~~it~~ can only be a saving ~~and~~

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C.B.

Mr. R.G. Hodgson: It's a contract and the fact of ^{HAVING} contracts ~~in~~ reference here, I think ~~some~~ ^{will} ~~be~~ ^{THERE} ~~can~~ only be a saving

Mr. Deans: Well, if you just give me a moment, I think I can explain it to you. ~~can~~ ^{THERE} can only be a saving if in fact the people who are currently doing the job are replaced by people who can do the job more cheaply.

Mr. W. Hodgson: Not necessarily.

Mr. Deans: I think that that - well okay, I think ~~and~~

Mr. W. Hodgson: They are still going to maintain the ~~old~~ ^{OLD} building.

Mr. Deans: Pardon?


Mr. W. Hodgson: They are still going to maintain the ~~old~~ ^{OLD} building; they are not giving that up.

Mr. Deans: I'll tell you, I'll pursue it later.

Mr. Gathercole: May I say, Mr. Deans, you have been one too, who has made references to the excessiveness of our rate increases. You can't have it both ways in this field; You can't be saying ^{as} ~~be~~ productive, as you can, as economically minded as possible, ~~and~~ ^{and} at the same time ~~not~~ have high rates. "We do have high rates, though, and that's one of the real problems with which we are faced today."

Mr. Deans: It flows from what you say, that you then consider the matter that I'm discussing to be one ~~in~~ from which ^A saving can be gained.

Mr. Gathercole: Well, we hope we can improve our productivity and that's why ~~we want to have, and why~~ we've been so eager ^{H AND} maybe this is why we are in this predicament today and having this discussion. ~~We wanted to get a building~~ ^{DOLLARS} that would save us several million ^A a year.

Mr. Deans: You're satisfied, Mr. Gathercole, that ~~the matter of the maintenance of the building~~ 

H101 to follow

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5.50 - 5.55 p.m.
M.R.

~~(Mr. Gathercole:)~~

~~a building that would save a great deal of money~~

~~1973~~

~~Mr. Deans: You are satisfied, Mr. Gathercole,~~

the matter of the maintenance of the building was not a prime consideration at any time by the commission in the determination of going to a leasing arrangement with Canada Square?

Mr. Gathercole: No. I'm satisfied that it wasn't a prime consideration. It was a fact, ^{or} but it wasn't a prime one. The prime ^{one} was to get a structure which was going to look after the needs, the requirements of our staff so that they are co-ordinated.

Mr. Deans: And, therefore, ^{me?} the choice to go to a ~~last~~ leasing arrangement, ~~was not~~ the matter of maintenance had no bearing on going to a leasing arrangement?

Mr. Gathercole: I didn't say that.

Mr. Deans: Had little bearing?

Mr. Gathercole: It was a factor. It has always been a factor but I think Mr. Sissons is much more *able to say*.

Mr. Deans: Oh, I'm sure he can but I want to see why you made the decision first, so that Mr. Sissons can tell me why he made it.

Mr. Gathercole: Well, I have the advice of these various gentlemen ~~who~~ and upon whom I rely; they are competent people.

Mr. Chairman: Anything else?

Mr. Deans: I have, but I won't right now.

Mr. Chairman: All right. Mr. Gaunt.

Mr. Gaunt: Mr. Chairman, there is one question, just to follow up on the financial end I would like to ask Mr. Gathercole. What was your prime borrowing rate at the time ~~this~~ this matter was being considered? That is to say, in around the late 1971 period, early 1972 period? What was your prime rate? Eight and a quarter per cent?

May 24, 1973
5.50 - 5.55 p.m.
M.R.

(Mr. Gathercole: Could I ask, or ~~is~~ is it permissible for me to ask Mr. Nastich?

Mr. Chairman: I see no reason why ^{not} if we get a better answer ~~or~~ or a more accurate answer.

~~Mr. Nastich: I wonder if you would just come forward and give that information, ^{Mr. Nastich,} ~~and then we can have~~~~

^{you} Would announce your name and then give us that information?

Mr. Nastich: My name is Milan Nastich. I am the Assistant General Manager of Finance and these are the best ~~guesses as to~~ figures until I go back to the data ^{va} but in February of 1972 - February 5th, 1972 as I recollect it ~~we~~ borrowed in Canada at seven and three eighths per cent. In April of 1972 it ~~was~~ was seven and five eighths ^p per cent. In August, as I recollect, it was eight and a quarter per cent or eight point three per cent. In the United States, at those equivalent times, we borrowed at about seven point seven per cent. In June the rates in Germany were six to six and a half per cent and in Switzerland at five and a half per cent.

Mr. Gathercole: ~~That's that~~ Milan, on that latter, ~~and the~~ German and Swiss rates, that's not ~~a~~ cost to us.

Mr. Nastich: No. But the point of ~~that~~ both the German and the Swiss is important; they are short-term loans - ten years - and for small amounts of money. About \$25 million.

Mr. Gathercole: We also have a lot of expenses attached to it.

22 Mr. Nastich: Yes.

Mr. Gathercole: Which brings the net cost up.

But the rate now is about eight, ~~eight~~ We borrowed about a month and a half ago at a ~~cost of~~ an interest ^{rate} of ~~the point~~ eight per cent. The market is a little softer now ^{if} we ~~went~~ went to borrow it would be around eight point one five or perhaps eight point three per cent. ~~The interest is now...~~

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M.R.

Mr. Chairman: Thank you. Have you another question on the same line, Mr. Gaunt?

Mr. Gaunt: No, I don't want to pursue that line any further. I have another line of questioning

Mr. Chairman: With Mr. Gathercole?

Mr. Gaunt: Yes, if I may.

Mr. Chairman: All right.

Mr. Gaunt: Based on the memorandum of March 9th, Mr. Gathercole; I don't know whether you have it there ~~but~~

Mr. Gathercole: Well, ~~you~~ know the one anyway.

Mr. Gaunt: Well, you know the one to which I make reference.


Mr. Gathercole: Is that to Mr. Farmer?

Mr. Gaunt: That's to Mr. Sissons.

Mr. Gathercole: Oh, to Mr. Sissons. Oh, I know, yes.

Mr. Gaunt: You make a clear reference and you indicate a clear intention in the memorandum to make a submission to the Premier and to the members of the Cabinet in that memorandum? What changed your mind?

Mr. Gathercole: It wasn't required. There was the intent



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(Mr. Gathercole)

~~it wasn't required. It was the intention~~ to make ~~the~~ a submission, to discuss it with them. On the other hand, in discussing it with the Premier and advising him ^{of} ~~us~~ our desire to go ahead and also getting the direction ~~from~~ from Mr. McKeough that he ^{would} ~~prefer~~ ^{us} ~~not~~ to use the conventional sources of money for raising the capital from Hydro bonds and so on, then we had to go ahead to proceed. It was our right, our responsibility, and we went ahead. The Premier didn't say ^{"Go} ~~us~~ ahead and do it." I want to make that very clear. What ^{he} ~~was~~ was simply saying ^{"Yes, "} ~~it~~ it is your decision, ^{"Go} ~~go~~ ahead and do it. I know you have been held up ~~over these years~~ and ~~you~~ have deferred it for these years."

Mr. Gaunt: When you wrote that memorandum, what form did you think those submissions would take? Did you have in mind a written formal presentation to the Cabinet? Or did you really have in your mind that it would be an oral contact? ~~with the Premier~~

Mr. Gathercole: Yes, I just thought we'd talk to the Minister of the Environment or the Premier and the Treasurer.

Mr. Gaunt: Bearing in mind ~~then~~ that you had never done this type of arrangement before ~~that~~ that is to say, you had never entered into any lease back purchase agreement ^{and} ~~and~~ bearing in mind that this was a very important matter as far as Hydro was concerned, did you not consider it wise and prudent to make perhaps more representation to the government, even by way of formal presentation? To get their views and to seek out all of the expertise that you could acquire at that particular time?

Mr. Gathercole: I think, Mr. Gaunt, that you have to look at it this way. We'd had plans prepared back in 1968 and 1969. We had, by reason of economic conditions, supplemented by a feeling on the part of the province that the time was not appropriate to proceed, deferred the construction of the plan. We had at that time received approval to go ahead, and what we had had was simply ~~and~~ indication that it would be more appropriate in terms of time to delay. So we delayed. But the plan was there, ^{and} ~~and~~ it was our intention to proceed. ^{If} ~~somebody~~ somebody didn't say ~~no~~ "No," then we were going ahead, and they would have to have very valid

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600 - 6:05 pm

C.B.

(Mr. Gaunt)

~~It's a considerable period of time, it's a long time~~
~~relationship~~. I'm interested just as a matter of curiosity,
 and perhaps it's ~~no~~ more than that, But why did you
 feel impelled to seek out the Premier's judgement with
 respect to the press release but not with respect to the
 decision as to what method Hydro was going to employ in
 the ~~new~~ building of the head office?

Mr. Gathercole: It was just ^{that} I was sending him
 a notification that we were proceeding; that we were
 proceeding with the construction of this building, and
 I was saying "I hope it isn't in conflict with your
 judgement".

Mr. Gaunt: Did you hear from the Premier in response
 to that press release?

Mr. Gathercole: There was no response.

Mr. Gaunt: There was no response?

Mr. Gathercole: No.

Mr. Gaunt: Perhaps it's unfair to ask you; If
 you were doing it again, would you ~~do~~ ~~xxxxxxxxxxxx~~

Mr. Gathercole: YOU know the answer.

Mr. Chairman: I take it you are through, Mr.
 Gaunt? That was ~~is~~ your last question?

Mr. Gaunt: That was my windup ~~for the moment~~.

Mr. Chairman: I'm going to assume that Mr. Renwick
 will be a little while. It is six o'clock. But I thought
 maybe Mr. Hodgson would ~~do~~

Mr. W. Hodgson: No, I will withhold my question.

Mr. Chairman: YOU would like to hold your question
 too? ~~No~~.

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6 - 6:05 pm

C.B.

Mr. Renwick: I won't be very long.

Mr. Bullbrook: ~~Maybe~~ ^{Maybe we should} let Mr. Renwick go ahead.

Mr. Chairman: Well, will you be more than five minutes?

Mr. Renwick: No; ^{OK} not more than 10.

Mr. Chairman: Are we agreed, then, that we proceed?

Will you have reference to many exhibits?

Mr. Renwick: Yes, the ones that we used today, 31 to 43.

Mr. Chairman: All right, I'm going to ask the clerk to put the book down there beside Mr. Gathercole, and dismiss ^{the clerk.} He's on union rates.

Mr. Renwick: Thank you, Mr. Chairman, Mr. Gathercole, I want to limit my comments at this time, or my questions to you at this time, to the evidence which you gave today on the various exhibits that were submitted to you. I want to deal first of all with the ~~sequence~~ sequence of exhibits 31 to 39, with the Safrance correspondence ~~in~~ and relationship with various members of the Hydro-Electric Commission.

The introduction at the last moment and that is not by way of criticism ^{because} as I understand ~~it~~ of Exhibit ~~number~~ 39, the memo of the minutes of the commission, which first considered the Safrance proposal, appeared on the surface to have perhaps answered the line of questioning which had taken place up to that time, which had been conducted by Mr. Shibley. But I find it most unsatisfactory. I want to ask you this question; As I take it, the three letters of Mr. Safrance, one to Mr. Banks on the 3rd of September;

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6 - 6L05 pm

C.B.

(Mr. Renwick)

one to Mr. Sissons on ~~the~~ January 25; one to yourself on February 17, 1972. That is exhibits, in the order I referred to them, exhibits numbers, 36, 37 and 31.

Mr. Gathercole: Thirty-six, 37; that is 32, that is 31 here;

is it? I've got 36 in my hand here.

Mr. Genest: Do you mind if ~~I~~ ^I try to help him?

~~that~~ Mr. Chairman: NO, go right ahead.

Mr. RENwick: I hope you won't count this in

my ten minutes?

Mr. Bullbrook: Certainly not; time out.

Mr. .Chairman: YOu have five minutes left.

Mr. W. Hodgson: Five and a half.

Mr. Gathercole: I've got here 36 anyway,

and 39. Mxx

Mr. Renwick: Thirty-six - 37 and 31 are the

principally going to be asking about
ones I'm speaking of. I don't really think the questions need a close examination of the documents. My question

~~is that Mr. Safrance wrote three letters to me,~~
~~each in substance a repetition of what he~~

H 104 to follow

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6:05 - 6:10 pm.
M.S.

(Mr. Renwick)

to you is that Mr. Safrance wrote three letters to you, ^{each} ~~each~~ in substance, a repetition of what he had said in the first letter.

Mr. Gathercole: You mean to Hydro?

Mr. Renwick: To Hydro, yes.

Mr. Gathercole: Not to me.

Mr. Renwick: No. Sorry, one to you, one to Mr.

Banks, one to Mr. Sissons over a period of about five, five- and-a-half months, all ~~substantially~~ saying the same thing, and confirming that funds ^ewere available, indicating the sources, indicating some ~~sort~~ sort of basic reasons why it should be considered. Is that correct? That they're ^{substantially} the same proposal?

Mr. Gathercole: Yes.

Mr. Renwick: And, Mr. Gathercole, it's clear that Exhibit ~~39~~ 39, the minute of the Commission's meeting on September 17, was a clear instruction from the Commission for negotiations and discussions to ~~not~~ -- not for negotiations ^A for discussions to ~~proceed~~ proceed with Mr. Safrance, with respect to the details of his proposal. Is that correct?

Mr. Gathercole: Yes, that this should be examined.

Mr. Renwick: That's right. And that they should contact Mr. Safrance to discuss it with him?

Mr. Gathercole: Yes.

Mr. Renwick: Right. Now, if I may borrow words which you used, Mr. Gathercole, you said that a proposal such as this would be analysed and evaluated. Now, I would like to know whether or not, following the instruction of the Commission on September 17, 1971, to and including the exchange of correspondence by you with ~~Mr.~~ Mr. Safrance in February, 1972, or subsequent to that time, as you reiterated in your ~~letter~~ memorandum to Mr. Sissons that it should be discussed, did you or the Commission ever see an analysis and evaluation of the financial proposal of Mr. Safrance?

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M.S.

Mr. Gathercole: I have no recollection of that and I presume that it was analysed^S and that it was discussed orally. Now, may I ---

Mr. Renwick: Mr. Gathercole, I don't want to cut you off, but I want to deal only in things that you know of. Would you direct, between now^{and}/the time we meet again on Tuesday, your mind to that specific matter?

Mr. Gathercole: Yes.


Mr. Renwick: And, of course, if I may suggest, the best evidence of a thorough consideration of that by the staff of the Hydro and a consideration by the Commission, would be reflected in a minute of the Commission. So, I would ask specifically that a special search be made to see whether or not that was referred to in the memo. And I think that the point of my question is perfectly clear; ~~and~~ I'm sure, Mr. Gathercole, you understand.

Mr. Gathercole: Yes.

Mr. Renwick: Let me return now to the series of Exhibits 40, 41, 42 and 43. That is, the letter to the Premier and then 41, 42 and 43, the letters to Mr. Fleck to the hon. Mr. Auld and the hon. ^{Mr.} J.K. Reynolds. Did you ever receive any reply to any of that correspondence, either by letter or by telephone, or ~~in~~ in any other way?

Mr. Gathercole: I didn't receive any communication by letter from them, but in the case of ^{the Hon.} Mr. ~~and~~ Auld, we had had some ongoing discussions and I was simply keeping him informed of it. Now, with respect ---

Mr. Renwick: Sorry. Could I ask, perhaps more specifically, the letter to ~~the Premier ended with a specific request~~.



May 24, 1973
6.10 - 6.15 p.m.
M.R. '

(Mr. Renwick)

~~... Could I ask perhaps more specifically ... letter to~~
the Premier ended with a specific request for advice or opinion from the Premier. Did you receive any advice or opinion that you in your mind concluded was from the Premier, either from the Premier, Mr. Fleck, or others who are closely associated as advisers of the Premier?

Mr. Gathercole: Not related to the February ---

Mr. Renwick: I believe the May letter if ---

May 16th letter to the Premier, which is Exhibit ~~40~~ 40.

The one ⁱⁿ which you refer to ---

Mr. Gathercole: To the conversation with Mr. ---

Mr. Renwick: With Mr. McKeough.

Mr. Gathercole: Yes, right. I received no written information.

Mr. Renwick: Did you receive any other communication that you in your mind would consider to be a reply to the points which you raised in that letter?

Mr. Gathercole: No.

Mr. Renwick: Not from the Premier?

Mr. Gathercole: No.

Mr. Renwick: Not from any of the men who are close advisers of the Premier?

Mr. Gathercole: No.

Mr. Renwick: Not from the then Treasurer of the Province?

Mr. Gathercole: No, not from the Treasurer.

Mr. Renwick: So that the communication represented by Exhibit ~~40~~ 40, your letter to the Premier, went without any acknowledgement or reply of any kind?

Mr. Gathercole: That is as far as ^{any} I recollect ^{on}

~~... inaudible ...~~ That is as I recall it.

Mr. Renwick: I would like you also if you would

between now and Tuesday to ---

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M.R.

Mr. Gathercole: That is my recollection.

Mr. Renwick: But I'd like you ~~to~~, if you would,

Mr. Gathercole, to refresh your mind, in the best way ~~as~~ possible way in which you can, ^{OW} between now and Tuesday ~~on~~ that aspect of the question.

And ^{those} ~~that~~, Mr. Chairman, are my questions on today's matters.

Mr. Chairman: You ^{will} wish to proceed, I ~~gathered~~ gather, on Tuesday?

Mr. Renwick: Yes, very briefly, at the beginning.

Mr. Chairman: Mr. William Hodgson - do you want to — ?

Mr. ^{W. Hodgson} Renwick: ~~Can I leave that open?~~ Can I leave that open?

Mr. Chairman: Yes. We will leave it open.

Mr. ^{W. Hodgson} Renwick: I think I have a fairly pertinent question I'd like to ask Mr. Gathercole, because in the reference to Mr. McKeough ^{there was a} the possibility that ~~the~~ ^{the} ~~Department of Government Services~~ ^{Department of Government Services} would evaluate it. Was that done? And I wonder if there was an evaluation made, if we could have a copy of it?

Mr. Gathercole: No, there wasn't ~~and~~ - there wasn't. And in that connection I found rather interesting a letter that I received from Mr. T.R. Hilliard, who ^{was} ~~is~~ Deputy Minister of the Department of Public Works at that time, ^{or} ~~and~~ Ministry of Government services back in March of 1968 in which he said "Both the minister of Public Works (the Hon. Ray Connell at that time) and a member of the Prime Minister's staff have asked me recently to be in contact with you to see what your building plans are for ~~the~~ University Avenue. I am not thoroughly familiar with the reasons behind these requests except perhaps it is felt there may be certain space, either in your new building or your present building, which the government might use. If you are in a position to give me any information at the present time I would appreciate it."

Now the reason I'm giving that letter is that it

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M.R.

(Mr. Gathercole)

indicates quite clearly in the Ministry of Government Services that the office building, the administration building of Hydro, is a Hydro affair. In other words, it has the responsibility for it.

Mr. Chairman: M Thank you. The hour is 6.15 or close to it and I hope you will be back with us on Tuesday, Mr. Gathercole. You may hope otherwise but you are such a popular ~~witness~~ witness that they all want to ask you questions.

Mr. Renwick: Mr. Chairman, if I may —

Mr. Chairman: Yes, Mr. Renwick?

Mr. Renwick: If I may, it would save a lot of time with the questions. I asked just a few moments ago, if I will not have the rug pulled out from under me by being informed that Mr. Safrance's source of funds is, in fact, the source of funds that ended up in the Canada Square finances^{ing}.

Mr. Genest: That is a good question. We'll investigate ^{that} ~~... inaudible ...~~

Mr. Renwick: Would you? Fine.

Perhaps we could have that right at the opening and then we won't have to ~~... inaudible ...~~

Mr. Chairman: We will adjourn until Tuesday at

3.00.

.....

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, May 29, 1973.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Ontario Hydro counsel:	Pierre Genest
	James McCallum
Canada Square Counsel:	Douglas Laidlaw
Chairman, Ontario Hydro:	George E. Gathercole
Commission architect, Ontario Hydro:	K. H. Candy

List of exhibits introduced during this sitting appears on last page

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The committee met at 3:10 o'clock, p.m., in the members' board room. Mr. J.P. MacBeth in the chair.

Mr. Chairman; Ladies and gentlemen, counsel; I believe we are ready to proceed. I call the meeting to order, and would ask Mr. Gathercole to come forward again, again reminding him that he was sworn some days ago, but I think the same oath still holds, it's not getting any thinner, Mr. Gathercole.

Now as you will recall, when we were here Thursday last ~~Mr. W. Hodgson~~ ^{Mr. W.} Hodgson had asked some questions, and I believe that Mr. Hodgson was through. Then I passed it over to Mr. Renwick, and Mr. Gathercole had undertaken to get some information for Mr. Renwick and for the committee. I pass it back to Mr. Renwick at this point, but hoping that he would keep, and any other members of the committee might keep their examination of Mr. Gathercole at this time to information that has already been ~~and~~ read by counsel, and then we may pass it back to the committee counsel who will carry on to new fields. But if there are any members of the committee who wish to examine at the present time, if they would limit their examination to matters that have already been introduced. Mr. Renwick.

Mr. J.A. Renwick: Mr. Chairman, that was precisely the intent of the questions which I left with Mr. Gathercole when we adjourned on Thursday of last week. And I want Mr. Gathercole, if he would, Mr. Chairman, to answer only from his specific knowledge, because it may well be that the information which I am seeking can best be given by other and subsequent witnesses.

First of all, in the proceedings of the commission itself, ^{there} ~~is~~ any record of an evaluation and assessment of the Safrance proposal which was set out in the three exhibits, No. 36 Safrance to Banks, No. 37 Safrance to Sissons, and No. 31 Safrance to Gathercole, to which Mr. Gathercole replied in Exhibit No. 32 Gathercole to Safrance, and which was the subject of a memorandum at that time? Is there any record in the proceedings of the commission of an evaluation and assessment of that financial proposal?

Mr. G.E. Gathercole: I am ^{prepared} ~~afraid~~ to answer that, Mr. Renwick. I have been advised that the Safrance proposals ~~were~~ ^{4-107.1- folios}

May 29/73
3.15-3.320 p.m.
E.M.

(Mr. Gathercole)

were examined and dealt with by Mr. Milan Nastich and a memorandum of Mr. Nastich's efforts has been provided to the counsel for this committee. The Safrance proposals were, in my view, dealt with in the detailed memorandum given to me evaluating the head office proposal, by Messrs. ^{MINK} ~~Wink~~ and Candy.

Mr. Renwick: Mr. Chairman, I ~~am~~

Mr. Gathercole: I believe it was April 10.

Mr. Renwick: Mr. Chairman, I would just like to

interrupt because I know that obviously answers have been prepared and ^{it} ~~may~~ have been appropriate but in the interests of the economy of time, is there in the records of the commission itself, any evidence that the commission considered an evaluation and assessment of the Safrance proposals?

Mr. Gathercole: There isn't any record in the

~~(-- the commission's minutes --)~~
commission's proposals dealing with, precisely, the Safrance suggestions. And on the other hand, there are memoranda which analyzed and took into consideration the Safrance proposals.

Mr. Renwick: I understand so and I don't want to pre-

judge what will come later but that information is best obtained from the persons who prepared the memoranda? I take it then that you do not recall the commission considering an assessment and evaluation of the Safrance proposal and that the minutes of the commission do not reflect any study of that proposal?

Mr. Gathercole: That is correct, directly, but

indirectly, they were ~~not~~ taken into consideration by the analysts ~~who~~ who were examining a variety of proposals.

Mr. Renwick: Mr. Chairman, secondly, do you know

of your own knowledge who the source of funds was to which Mr. Safrance referred in those exhibits?

Mr. Gathercole: I haven't any personal knowledge, no.

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3.15-3.20 p.m.
E.M.

Mr. Renwick: Were you ever informed as to the source of Mr. Safrance's funds?

Mr. Gathercole: No.

Mr. Renwick: And ~~the third~~, my third question related to Exhibit Nos. 40, 41, 42 and 43; the letter from yourself to the Premier; the letter from yourself delivered to Mr. Fleck's home; the letter from yourself to Mr. Auld; and the letter from yourself to Dr. Reynolds. And my question was, do you recall receiving any reply, in writing or otherwise, that could be considered a response to you by the government of the ~~information~~ discussion which your letter to the Premier appeared to request?

Mr. Gathercole: I have no record of any direct response but today I telephoned Mr. Fleck to inquire as to whether there was any record in his office of such a reply. ^{is} And I was advised that he had sent ^{to} my office a letter which was dated August 8, 1972, ~~and~~ ^{Ras} Mr. Fleck ~~had~~ also supplied a copy of such letter, which has been made available to the counsel of this committee. Now, I have no recollection of having received this letter but I cannot exclude the possibility that it might have been received. I should say, however, that we do have a system in our office in which a record is kept of all incoming correspondence and there is no notation of the receipt of Mr. Fleck's letter therein recorded.

Mr. Renwick: ~~So~~ I take it then, that apart from this letter, which I will leave to counsel to deal with as he sees fit, the letter from Mr. Fleck to you in August ^{of} 1972, that you had no other reply from the Premier, from the Treasurer, who was referred to in your letter to the Premier, or from Dr. Reynolds or from the hon. James Auld or anyone else amongst the

(Tape H-108 follows)



May 29, 1973

May 3.20 - 3.25 p.m.

M.R.

~~(Mr. Renwick)~~~~Dr. Reynolds is from the New York Area and~~

~~also amongst~~ the close advisors to the Premier that you would consider an answer to the points that you had endeavoured to raise in your letter to the Premier of May 16th?

Mr. Gathercole: My letter of May 16th - no.

Mr. Renwick: Thank you. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Renwick. The clerk has just passed out ^{Space,} sheet entitled "copy, ~~space~~ confidential," September 2nd, 1971. I understand that is an interpretation of the handwriting on the back of Exhibit 36.

You ~~should~~ proceed, Mr. Shibley.

Mr. Shibley: I'd ~~like~~ like to put ⁱⁿ Exhibit, Mr. Chairman, the letter to which the witness has just referred, being the letter dated August 8th, 1972, which reads:

"Dear George: Thank ~~for~~ you for your note. The Premier will be ~~not~~ interested in seeing it. In passing I might add that while he wants to be kept informed, the judgement is supplied by the commission. Yours sincerely, James T. Fleck".

And it is directed to Mr. George Gathercole.

Now that the document has been produced, Mr.

Gathercole, does it refresh your memory that you received this letter from Mr. Fleck as at the time of its date?

Mr. Gathercole: No. I have no recollection.

Mr. Shibley: Still don't have recollection? Well then in any event, we will have this made the next exhibit.

Mr. Chairman: I believe that is "A". ~~Does~~ Does that correspond? ~~with~~ Exhibit 44 then will be this letter to "Dear George" from Mr. Fleck, dated August 8th.

Mr. Shibley: Now then, Mr. Gathercole, I want to direct your mind to the question of your dealings, and dealings ^{of} ~~with~~ others within the Hydro organization, with other developers

May 29, 1973
3 20 - 3.25 p.m.
M.R.

(Mr. Shibley)

who were submitting ~~the~~ proposals for the construction and financing of your new head office building. I refer you first to a letter dated October 5th, 1970, on the letterhead of the Fairview Corporation Limited, directed to Mr. Candy, and a reply to that letter of October 16th, 1970, a copy of which reply ~~was~~ was sent to you for your attention.

Would you please produce both those documents to the witness? And perhaps, Mr. Chairman, we can have the letter from Fairview of October 5th, 1970, made Exhibit 45 and the reply Exhibit 46.

You will note in the letter from Fairview, Mr. Gathercole, in the second paragraph, there are numerous different leasing arrangements, some involving Hydro ownership of the land and some involving Fairview ownership of the land, combined with various option arrangements which would provide for the ultimate long-term ownership of the land and building by Hydro.

Now, Mr. ~~Gathercole~~ Gathercole, I gather you saw a copy of that letter as well as a copy of the reply, wherein, ~~in~~ Exhibit 46, Mr. Candy stated: "Thank you for your letter suggesting the various methods under which you would be prepared to participate in the financing and/or construction of our proposed new head office building. As a result of our previous discussion in connection with this project we have given this matter consideration and would be quite interested in discussing the situation with you, but would prefer to postpone our discussion until the early part of 1971 at which time I will contact you in order to arrange a meeting.?"

~~Was this a copy of the letter from Fairview to Mr. Candy?~~

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3:25 - 3:30 pm
C.B.

(Mr. Shibley)

~~at which time I will contact you in order to arrange a~~
~~meeting.~~ Was this one of the early incidents of a lease/
purchase type arrangement being one of the alternatives
~~considered~~ considered by anyone on behalf of Hydro?

Mr. Gathercole: The question I have in my mind,
Mr. Chairman, is to whether it was one of the earliest;
it obviously wasn't as early as some, because Hydro had
been engaged in an analysis of lease-purchase arrangements
for some time. But I would say that it was one of the
earlier approaches.

Mr. Shibley: Yes. Then I'll produce to you
a letter dated September 9, 1971, that's the year following.
I'm sorry, it's not a letter, it's a memorandum from Mr.
Sissons for the official records of Hydro of that date,
and it references an approach by Cadillac Commercial Properties.
First of all, has that memorandum been reviewed by you?

Mr. Gathercole: I don't think I've seen this, Mr.
Shibley.

Mr. Shibley: I'd ask that it be made, in any event,
exhibit 47, Mr. Chairman.

Mr. Chairman: Right.

Mr. Shibley: You'll notice that in the memorandum,
it is sort of a memorandum for the file, Mr. Sissons outlines
the approach by Cadillac Commercial Properties and he says
in the second paragraph: "I have been putting them off on
the basis that our own plans were too indistinct, but was
unable to do this any longer and had a session with them the
other day."

Mr. Genest: Excuse me, Mr. Shibley, did you say this
was a memorandum for the files? The one I have ^{seems to be} addressed
to Mr. Witbeck and Candy.

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3:25 - 3:30 pm

C.B.

Mr. Shibley: It's ^{typed} up on the top, "official record" and ~~and~~.

Mr. P. Genest: That shouldn't mislead ^{me} I'm told that ~~the statement~~ ^{is the statement} of the copy retained by the writer,

Mr. Shibley: Thank you.

Mr. Genest: If it has the words "official record" on it that's the file copy of the memorandum.

Mr. Shibley: All right. Thank you for the clarification.

Then it's a memo from Mr. Sissons to Mr. Witbeck and Mr. Candy. Later on, in the same paragraph, "They expressed an interest ⁱⁿ being considered as a project manager and construction agent for our new building in the same manner as they are doing for the Mount Sinai apartments on McCaul St. I gather that this is a ^{minor} part of their normal business, but that they do keep a full time project and construction organization which they use on projects other than their own".

Now was the ~~the~~ circumstance that Cadillac Commercial Properties were interested in developing your head office building brought to your attention?

Mr. Gathercole: Yes it was.

Mr. Shibley: Did you in fact then have a meeting ~~with them~~ ^{with} with principles of that firm on November 29, 1971?

Mr. Gathercole: Yes, ~~there was~~ I participated in a luncheon meeting with representatives.

Mr. Shibley: I'm producing to you a memorandum to the file from Mr. Candy dated December 10, 1971, which we will make exhibit 48, and it references a meeting on Monday, November 29, held at the University Club with Mr. George Gathercole, chairman, Mr. Doug Gordon, general manager,

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C.B.~~Mr.~~ (Shibley)

Mr. Diamond, president of Cadillac Developments, and Mr. Candy to discuss the possibility of Cadillac Developments submitting a proposals for a lease-purchase arrangement for the new head office building. Now, Mr. Gathercole, what took place at that particular ~~the~~ meeting?

Mr. Gathercole: We had a discussion about the possibility of whether they would be interested in participating in a construction of some type of lease-back or other arrangement with Ontario Hydro, ~~and I think it was~~ and I think ~~it was~~ Mr. Candy who had made the arrangements to have Mr. Diamond come in to see me, and so we brought in Mr. Gordon and Mr. Sissons and so on and discussed it at that meeting.

Mr. Shibley: So ~~that~~ you brought your own staff out in force, I note from this memorandum, in terms of senior personnel. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: In terms of the representation made to you by Cadillac, did you consider them a serious contender for this project?

~~Mr. Gathercole: Yes.~~
~~considered them.~~

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3:30 - 3:35 pm.
M.S.

(Mr. Shibley)

a serious contender for this project?

Mr. Gathercole: Well, I certainly did, yes. I think we all considered them as a very serious contender for participating.

Mr. Shibley: Relating this meeting to the memorandum which was exhibited ^(on the) last day, which was the ~~the~~ memorandum dated the 25th, wherein it appeared that Mr. ~~Sissons~~, who prepared the memorandum, was speaking of singling out a single developer for undertaking the project, I'd like to understand your conduct, in conjunction with these other people from Hydro, in pursuing this type of meeting at this particular time.

Mr. Gathercole: Well, Mr. Sissons' ^{prob} logistics ability was, I thought, very much of a talking-out-loud piece and my feeling, very strong feeling, was that there were some things that were being said in there which were not ^{acceptable.} ~~acceptable~~ That we had to have - there was no question about that - we had to have proposals and that these should be ^{and} attended, another company should have the opportunity. This meeting was not ~~just~~ ^{just} arranged just on the spur of the moment, but rather, probably, had been planned before Mr. Sissons' preparation of that document. But I'd had some discussions with Mr. Sissons and with Mr. Gordon, and there was no question in our minds that the field was open for competition, for participation by other developers or contractors.

Mr. Shibley: I want to be clear on that, Mr. Gathercole. When you say "there was no question in our minds", to whom are you referring when you say "our"?

Mr. Gathercole: Well, certainly that was true in my own mind ~~and~~.

Mr. Shibley: Yes.

Mr. Gathercole: ~~and~~ and I think, in a general way, it was true of the general manager and of others as well.

Mr. Shibley: All right. Well, then I want to show you also a letter dated September 16, 1971, on the letterhead of

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M.S.

(Mr. Shibley)

Horizon Development and Management Limited, directed to Mr. Sissons, and signed by Walter Zwig who, I believe, is the head of that corporation.

Mr. Genest: September?

Mr. Shibley: September 16, 1971. I might tell members of the committee that I'm dealing now with the developers in the chronological sequence of all communications in writing that ~~was~~ have been produced to me; and I'm moving from one to the next on that footing. So, I will be going through now the documentation with Horizon and ~~was~~ moving from there to Yolles Rotenberg and so on.

~~xxxxxxxxxxxxxxxx~~ Mr. Gathercole, again ~~by~~

Mr. Chairman: ~~Number~~ 49, I believe.

Mr. Shibley: Thank you, Mr. Chairman. I want to go over this letter with you with some care. You'll notice it starts off, "Thank you very much for seeing me yesterday", and I ~~that~~ gather, therefore, there was a meeting between Mr. Sissons and Mr. Zwig on ~~xxxx~~ September 15. Have you any knowledge or information respecting that circumstance?

Mr. Gathercole: No, I haven't. No.

Mr. Shibley: Were you brought into the picture at this early date, respecting the communications between Mr. Sissons, or anyone else in Hydro, and Horizon Development?

Mr. Gathercole: No, I wasn't.

Mr. Shibley: All right. Then going on:

"To confirm our conversation, we have under way at present a joint venture arrangement with Metropolitan Life Insurance Company for a development in excess of \$50 million at Eglinton and Yonge."

And so on.

"We would like to make a proposal whereby we would erect an office facility, ~~xxxxxxxx~~ together with certain commercial

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M.S.

(Mr. Shibley)

uses on the ground floor, to house Ontario Hydro

We would anticipate entering ~~10 year~~ ground lease on your lands and providing the aforementioned facilities on a long-term lease \$40 ~~X~~ 50 years.

Then in the third paragraph:

"Although we have ample funds assured us for such a development, we would be prepared to permit Ontario Hydro or its Employees' Pension Fund to participate in the investment to whatever extent they desire up to 50%....."

~~And then we will be~~



Tape H 111 follows

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3:35 - 3:40 p.m.
B.G.

(Mr. Shibley)

~~trying to participate in the investment to whatever extent~~
~~they desire up to fifty per cent;~~ and then on into the next
paragraph - "This approach would enable you to have the best
of both worlds in that there should be no effect on the borrowings
you normally make for capital expenditures since ^{we} ~~it~~ would finance
by way of a mortgage or mortgage bond. Further, our experience
in designing efficient buildings will enable us to ~~to~~ give you
the best possible type of facility", and so on.

Now, then, attached to that is a schedule of buildings
~~constructed~~ constructed by this company which is an impressive list,
including National Trust building; Prudential Insurance building;
Procter and Gamble building; Continental Insurance ~~building~~; 55 Yonge
Street; Foster Building; the CN Tower and the Travelers Tower on
University Avenue. So, would you agree with me at this point,
Mr. Gathercole, that this is a company with a formidable history
of dealing in respect ^{other} ~~to~~ lease-purchase and construction-type
developments?

Mr. Gathercole: Yes.

Mr. Shibley: And again, would this be a company that
Hydro would necessarily take very seriously as a prospective
developer for your own head office?

Mr. Gathercole: Yes, ~~that~~

Mr. Shibley: Now, then, the next memorandum I want to
table as an exhibit is one dated September 22, 1971, from Mr.
Sissons to Mr. Witbeck and Mr. Candy, ~~and~~ Maybe we
will make that exhibit - fifty, thank you.

Mr. Chairman: Fifty.

Mr. Shibley: Reference is: ~~that~~ "Walter Zwig, who had
been in to see us several years ago, came to see Banks from the
financial ~~and~~ angle, and since he was not here I discussed our
situation fully with him. Horizon will obviously be one of the
organizations from whom we should solicit a proposal." And then

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(Mr. Shibley)

there are some handwritten notations on this that I will ask Mr. Sissons about when he is in the box, but, for the moment, Mr. Gathercole, this appears, I take it, as a followup of the communication from Mr. Zwig to Hydro, is that correct?

Mr. Gah Gathercole: Yes.

Mr. Shibley: And that as early as September 22, 1971?

Mr. Gathercole: Yes.

Mr. Shibley: Now, then, the next document is one dated December 21, 1971, from Candy to file.

Mr. Chairman: Number 51.

Mr. Shibley: And you ~~note~~ note it refers to a meeting held in the office with Walter Zwig of Horizon Development, and John Dean, Manager of Financial Policy, "to discuss the policy of Mr. Zwig submitting a proposal for the financing and construction of the head office administration building on a thirty-year lease-purchase basis. Mr. Zwig ~~was~~ advised they could raise sufficient funds from Metropolitan Life at an interest rate of nine to nine and one-half percent, which money would be generated in Canada. *I pointed out the situation with respect to our existing architects and he suggested a preference for the use of Page and Steele but would be quite satisfied to have Mr. Gordon S. Adamson associated with them on the project."

And the next paragraph, "He is going to submit a proposal on a per square foot per annum cost by January 15, 1972, which will include the financing and construction ^{on} of the building and all maintenance of the building, but not including the lighting bills and real estate taxes". Now, then, Mr. Gathercole, were you as of this date, being December 21, 1971, apprised of the ~~intent~~ intense interest of Horizon Development to undertake this building on your behalf?

Mr. Gathercole: I wasn't aware that Horizon Corporation itself was making these approaches. On the other hand, I knew that a number of proposals were being considered and received.

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B.G.

Mr. Shibley: Thank you. Now, again I would like to relate the date of this memorandum, which is December 21, which discloses meetings between Candy and Dean of your organization with Mr. Zwig to the memorandum of November 25, and ask you to comment, if you would, upon what was the then thinking, first, ~~at~~

~~_____~~

(Tape H-112 follows)

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3:40-3:45 pm
C.B.

(Mr. Shibley)

~~if you would agree that was the position~~ at
the level of commissioners respecting the soliciting of
competitive proposals from reputable developers?

Mr. Gathercole: Our attitude was that we
should receive competitive bids, in respect to the proposals,
from a number of satisfactory developers ^{or} ~~and~~ contractors.

Mr. Shibley: All right. Then to go on with Horizon;
the next document is one dated January 17, 1972, on the
letterhead of Horizon directed to Mr. Candy of Hydro. I
shall ^{ask} ~~ask~~ it be made the next exhibit.

Mr. Chairman: Fifty-two.

Mr. Shibley: You will note it starts off, Mr.
Gathercole and members of the committee, "Further to
our recent meetings with Mr. Dean and yourself and our
brief examination of the plans prepared by Shore and Moffat
and Partners". Now were these the plans for the original
building that were deferred and ultimately scrapped?

Mr. Gathercole: I don't know. I ~~presume~~ presume
they were but as to whether they were or not, I don't know.

Mr. Shibley: Shore and Moffat had nothing to do
with plans for the new building, the building presently
under construction?

Mr. Gathercole: No.

Mr. Shibley: They were partners

Mr. Gathercole: But Gordon Adamson, Shore and Moffat
were the the architects for the plans proposed for our
original building planned in 1968-1969.

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C.B.

Mr. Shibley; Then it goes on:-

"Please find our proposals for creating a new office building encompassing all of the special features shown on the aforementioned plans with specifications such that the calibre and quality of the building and finishes will be equal to or better than our recently completed Travelers building on University Avenue."

Then the proposal is set out, starting the last paragraph of that first page.

66 Ontario Hydro ^{would} ~~lease~~ lease their lands to Horizon for 33 years at ^{the} ~~the~~ rental of \$1 ^a ~~x~~ a year. Hydro ^{would} ~~be~~ be responsible for real estate taxes, if any, on the lands and building during the period of construction. At the end of the lease period land together with improvements ^{created thereon} ~~created~~ would revert to Hydro ownership. Ontario Hydro would ~~enter~~ enter into a net lease for the entire building at an annual rental of ~~xx~~ \$3,680,856, ^{payable} ~~paid~~ in advance. Horizon would sublease back from Ontario Hydro those portions of the ground floor and lower level not required by Hydro ~~at~~ at an annual rental of \$6 per square foot for the ground floor area and \$2.50 per square foot for the basement area."

Then, skipping down, it talks about an operating contract, the cost of which would be \$1.40 per square foot per year; the building to be a 21-storey structure of approximately 1,040,000 ^{square ft} ~~xxxxxxx~~ feet above grade.

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(Mr. Shibley)

Then in the last paragraph "Our financing has been arranged at eight and ~~five~~ ^h five-eighths per cent based on the aforementioned net net rental figure".

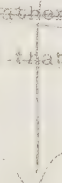
And he goes on to reiterate ~~that~~ ^{that if} the pension fund wants to participate, it can do so up to a maximum of \$15 million, earning the same rate as we would expect to pay our conventional sources of funds."

Then there is an appendix to that latter, appendix A, setting out the special features and so on. Now, was that in essence the submission by Horizon Development and Management Limited for the development of your head office building?

Mr. Gathercole: Yes, I think, Mr. Shibley, it was. But on the other hand I didn't see the proposals, so I'm not able to say with any authority, Mr. Candy would ~~not~~ be able to verify.

~~Mr. Shibley: Mr. Gathercole just stopping here.~~

~~Gather from the material that is yet to be.~~



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H113 to follow

H-113-1

(Mr. Shibley)

Mr. Gathercole, just stopping here. I gather from the material that has yet to be exhibited that what was ultimately done, was an overall precis and analysis of your various people, which was made up into a report for study by the commission. Is that correct?

Mr. Gathercole: Yes that's right, for senior management.

Mr. Shibley: And the data that has been worked up, so to speak, as a result of exchanges between any people within Hydro and any interested developer ultimately their interpretation on what they discovered was incorporated in that ultimate memorandum to the commission. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: So that this is, so to speak, the reason why you are not able to comment on the day-to-day exchanges between Hydro people and the developer in this case. Is that right?

Mr. Gathercole: That is very true.

Mr. Shibley: Then the next document I want to take you to, relates to the efforts of Yolles and Rotenberg. And you will forgive me, Mr. Gathercole, but I am using you as a vehicle to introduce a lot of documents; ~~but~~ I want to preserve the chronological order for the benefit of members of the committee, so that they will ^{know} ~~know~~ what was going on as it was going on, rather than ^{worry} ~~worry~~ you at this moment as to content of these documents.

This first document which is referable to Yolles and Rotenberg.

Mr. Chairman: Fifty three.

Mr. Genest: May I have the date of that, Mr. Shibley?

Mr. Shibley: ~~Exhibit~~ Exhibit 53, ~~dated~~ dated December 14,

1971. Now it appears, Mr. Gathercole that you did participate in the discussion that is referenced in this memorandum. If you look at it with me it says:

"A meeting was held today in the chairman's office to discuss the possibilities of Yolles and Rotenberg submitting a proposal to ~~for~~ either lease or construct a lease. purchase building in the new complex they propose to develop on the site of the existing

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3:45 - 3:50 pm
CA

E-113-2

(Mr. Shibley)

Eaton's College Street store."

And I ask the committee members to note that the proposal at this juncture related to ~~the~~ development on the site of the Eaton's College Street store and not a development on the site of the Hydro property at University and College.

"The meeting was attended by G.E. Gathercole,
MR. Mr.
/Gordon, /Sissons, Mr. Candy, Mr. Rotenberg,

Mr. Tatham of Yolles and Rotenberg, Mr. Uiska
of Yolles and Rotenberg, and a fourth
representative of that firm. Mr. Rotenberg
explained their proposal of constructing
2,500,000 ~~sq~~ square feet of office space
together with a hotel, apartment and commercial
facilities on the 11½-acre site of Eaton's
College Street between Bay and Yonge, and
College and Gerrard. He stated that as a
prime tenant they felt sure they could provide
1,000,000 sq. ft. of flexible office space
at an annual rental of \$7 or less per square
foot."

Now just stopping there for a moment, Mr. Gathercole, what interpretation do you put on that comment that I have just read, "as a prime tenant they felt sure they could provide 1,000,000 sq. ft. of flexible office space at an annual rental of \$7 or less per square foot?"

Mr. Gathercole: As I recall it, the meeting was arranged through Mr. Candy and Mr. Sissons and through an expression of Mr. Rotenberg's desire to see me. So I did, and they presented certain plans at that time, and I did observe that I ~~thought~~ ^{thought} in view of the existence of our engineering building and our other facilities in that area that we shouldn't go over on the Eaton property. That was the only observation I think that I made at the time, that I did think that we had a site, and that we ought to develop it ~~at that~~ ^{at that} location.

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CA

H-113-3

Mr. Shibley: Mr. Gathercole, ~~what~~

Mr. Gathercole: The building at that location.

Mr. Shibley: This plan that Y and R had for the Eaton site, was a very ambitious plan, was it not?


Mr. Gathercole: Yes, we would be part of a more ~~ambitious~~ ^{em}brasive development.

Mr. Shibley: I see that the total construction that they planned was $2\frac{1}{2}$ million sq. ft; that would be some $2\frac{1}{2}$ times the area you were then talking about.

Mr. Gathercole: Yes.

Mr. Shibley: And is it not part of their submission to you at that time - I am talking about December 14, 1971 - that ~~if Hydro would take up 40 percent~~

H-114-1 follows



May 29, 1973
3.50-3.55 p.m.
M. R.

H - 114 - 1

Chairman: Mr. MacBeth

(Mr. Shibley)

~~do at that time. I am talking about December 14th, 1971,~~
~~and~~ if Hydro would take up 40 per cent of the total of the space to be developed, they could give you a very attractive rate of rental, namely, seven dollars a square foot.

Mr. Gathercole: Yes, in some respects it had some attractive features ^{there to} ~~that is true~~. I believe they had an option on the Eaton property which is now the site of the College Street store, and that they wished to proceed with the development. That was, at least, the information that was imparted to us.

Mr. Shibley: I notice that your last comments also ~~is~~ are confirmed by this memorandum:

"The chairman explained, and I confirmed later, that we are not very interested in renting space as such, but felt that we should eventually own our own building and therefore our interests would be basically in a lease-purchase basis over a period of 30 years. The chairman suggested that they pursue this matter with Mr. Sissons and myself. I advised Mr. Rotenberg that we would require some financial statistics on the costs ^(to) ~~of~~ Ontario Hydro for acquiring such an agreement, not later than the week of January 17, 1972".

Was there discussion with Yolles and Rotenberg for Hydro to become owner of the building that it would occupy in this complex on the Eaton site, after a term of years?

Mr. Gathercole: Not that I recollect.

Mr. Shibley: The next document that I want to produce to you is one dated January 20th, 1972, which is a letter, actually a covering letter, forwarding to you the Y and R proposal of the same date for the Eaton ^{site} ~~side~~.

Mr. Chairman: Exhibit 54.

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3.50-3.55 p.m.
M.F.

H - 114 - 2

Mr. Shibley: We will make, Mr. Chairman, the letter Exhibit 54(a) ~~xxx~~ and the proposal itself 54 (b)?

Mr. Chairman: Agreed.

Mr. Shibley: Now you will notice in this letter of January 20th, Mr. Tatham^a, on behalf of Y and R, ~~said~~ says:

"Originally we were authorized by Mr. Gathercole to direct to the attention of yourself and Mr. Sissons our proposal on the Eaton College Street site. Subsequently you indicated you would be interested in a proposal from us on your University-College site as well. We have to date concentrated our energies on developing what we believe to be an outstanding proposal on ^{the} Park Centre site".

Now, Park Centre was the development to be on the Eaton's property. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: "However, should our proposal prove unsatisfactory to you, we would be very interested in presenting a subsequent proposal relating specifically to your University-College property".

Then on the next page they give a number of buildings developed, built or owned ^{and} ~~or~~ managed by them - exhibit 54 (b) is the proposal itself. I note the rental rate is \$4.70 per square foot per annum. It then outlines a variety of things. Members of the committee, my intention is not to go through these proposals with you in any detail, but simply to have made them available as exhibits so that you can study them for your own purposes, pointing up as I go along only things that I consider salient.

I notice on ~~-----~~

Mr. Genest: Mr. Shibley, may I interrupt? We are a little confused with documents here. I think you were referring to a covering letter - exhibit 54 (a) was a covering letter dated January 20th, did you say?

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3.55 - 4.00 p.m.
M.R.

Mr. Shibley

~~An Non-Member~~: Yes.

Mr. P. Genest: ~~Substantiated~~ I don't seem to have those.

Mr. Chairman: What I have here ^{as} 54A is one marked February 7th.

Mr. Genest: Yes. What has been passed around is a letter dated February 7th.

Mr. Shibley: No. No. You have got the wrong --- I'm sorry, then, you have the wrong one.

Mr. McCallum: May I have one?

Mr. Shibley: ~~There~~ If I may explain for everyone's benefit, There were two proposals submitted by Y and R; The first dated January 20th under cover of letter of the same day referable to what they call Park Centre.

The second proposal is the one under date of February 7th which I have yet to reach.

Mr. Chairman: All right. Well what has been passed around to us is the letter of February 7th. I wonder if you would see if you could locate the letter of January 20th?

Mr. Shibley: Do you now have the correct letter?

Mr. Genest: I have ^{the} January ²⁰ ^{letter} with A Thank you.

Mr. Shibley: The letter dated January ~~xxxx~~ 20th, 1972,

is Exhibit 54A and the proposal of the same date is Exhibit 54B.

Mr. Chairman: Where is the date on the proposal?

Mr. Shibley: Right on the face page

Mr. Genest: I have the ~~proposal~~

Mr. Chairman: ¹ ~~You~~ 've got the right proposal but not the right letter.

Mr. Shibley: Now Mr. Gathercole, I notice on one page reference ^{that} the quality of the building was to be similar to that achieved in the IBM Computing Centre Building of our award-winning Parkway Place Development, improved upon to the extent of Ontario Hydro's requirements. ¹¹

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3.55 - 4.00 p.m.
M.R.

(Mr. Shibley)

Was someone from Ontario Hydro designated to visit the IBM Computing Centre Building?

Mr. ^{W.}~~B.~~ Newman: ~~Mr.~~ What are you reading?

Mr. Shibley: I'm reading from the proposal dated

January 20th, 1972.

Mr. Walker: ^{Exhibit} ~~Page~~ 54B. ~~now~~

Mr. Shibley: Yes, and I am ~~now~~ at Page 6 of the proposal itself. I'm sorry, I should have indicated Page 6, the second paragraph.

Mr. Walker: ^{They're not} ~~are~~ numbered...

Mr. Shibley: Yes, that's the difficulty; the pages are not enumerated.

Mr. Deans: How does it start?

Mr. Shibley: It starts, ~~the~~ outline specifications — architectural."

~~An~~ ^{member} ~~member~~: All right

Mr. Shibley: Okay? Are we all together?

Mr. Deans: It just shows how carefully we follow you.

Mr. Shibley: Thank you. I'll be on my toes even more so. Mr. Gathercole, I understand that someone from Hydro actually visited the IBM Computing Centre Building. Is that correct?

Mr. Gathercole: Yes I believe Mr. Sandy visited it; and a number of others ^{had} ~~also~~ ^{made} ~~visits~~ visits to it, and had the official opening of it.

Mr. Shibley: Now then ~~the~~ members of the committee, if you will move through the material in that proposal to the page styled "rental proposal." It's well on into the material.

Mr. Genest: Sorry, Mr. Shibley, ~~where/are/~~ where are we now?

Mr. Shibley: Rental proposal. ~~to the~~

?? Mr. Chairman: Three sheets in the back I think.
H-116 to follow

May 29, 1973
4.00 to 4.05
N.T.

H-116-1

~~(Mr. Shibley)~~

~~The faster the~~

Mr. Chairman: Three sheets ^{from} ~~the~~ the back of it, I think.

Mr. Shibley: I would ask the committee to note the terms as set out on that page; the area, approximately a million square feet; rate, ~~offered~~ 470 per square foot; storage \$3; term 30 years; escalation; full operating costs in accordance with our current practice, "Our rental rate incorporates an allowance of \$1.35 per square foot for operating costs. The operating cost allowance is based on actual experience ~~for~~ ^{over} many years in high quality office space." Just stopping there, Mr. Gathercole, is it not a fact that Yolles and Rotenberg have quite an exceptional reputation as landlords in the city of Toronto?

Mr. Gathercole: I believe they have, yes.

Mr. Shibley: Yes, and they are extremely qualified in terms of management experience?

Mr. Gathercole: That is the report I have.

Mr. Shibley: Yes, thank you. And they were offering to operate this building at \$1.35 per square foot. Lessee covenants to pay rent and so on; lessor covenants. Existing University Avenue site, prepared to purchase these lands at market value, coincident with lease commencement. Had there been an evaluation placed on your site of \$7 million?

Mr. Gathercole: That's the figure that has been commonly used as providing something of a realistic evaluation.

Mr. Shibley: And I gather that Yolles and Rotenberg, therefore, were offering to buy that site from you ^{at or} ~~for~~ about that price?

Mr. Gathercole: Yes.

Mr. Shibley: Yes. Financing; the proposal is based on a 30-year amortized loan at $8 \frac{3}{8}$ per cent, three-quarters of one per cent above the Ontario Hydro bond rate. "We would like to

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4.00 to 4.05
M.T.

H-116-2

(Mr. Shibley)

give consideration to the possibility of having the interest rate open for review at ten-year periods with a corresponding rental adjustment." Now, just stopping on ~~W~~ that term, would that mean that you would not have a firm financial arrangement for the full term of 30 years if you ~~had agreed~~ ^{to that} to that suggestion?

Mr. Gathercole: That is my understanding.

Mr. Shibley: So that this would leave you open to a variable in that area? Then, finally, the last sentence, "Ownership will be transferred to Hydro upon termination of 30-year lease for ~~the~~ ^{at} cost of one dollar". Now, Mr. Gathercole, I just point to that and refer you back to the question I asked you earlier, whether they had ^(as) part of their proposal, preferable to the Eaton site, offered you the ~~option~~ opportunity to become owner of that building ~~and~~ occupied by you in ~~the~~ that complex after 30 years. Having regard for what is now, in this exhibit, would you agree with me that you were being offered the opportunity of what ~~was~~ amounted to a lease-purchase agreement on the Eaton site?

Mr. Gathercole: Yes.

Mr. Shibley: And upon the terms that we just outlined?

Mr. Gathercole: Yes, I would think, subject to some discussion ~~and~~ ^{and} firming up. I think that the proposal indicates that there was some flexibility here in different parts, but it was a broad proposal, yes.

Mr. Shibley: In dealing with that site, and before leaving this proposal, this would be a site at the intersection of Yonge and College Street, is that correct?

Mr. Gathercole: Yes, Yonge and Bay and College.

Mr. Shibley: Yes, ~~and~~ ^{and} relatively speaking, ~~did you~~ ^{did you} formulate any assessment of the ~~advantages of locating at that site as opposed to College and University?~~
did you formulate a comparison of the advantages of locating at that site as opposed to College and University?

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(Mr. Gathercole: There was some consideration given to trying to arrive at an assessment of some of the advantages and disadvantages of it. I believe that Mr. Sissons gave some study and some consideration to this matter. This is my recollection.

....

Tape H-117 follows

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(Mr. Gathercole)

~~study and some consideration to~~ ~~be made~~ ~~later~~. This is my recollection.

Mr. Shibley: Was the proposal to ~~build~~ ~~have~~ have someone build for you on that site, pursued, or did you reject it in favour of a comparison of proposals for the development of your own site at College and University?

Mr. Gathercole: My own personal conviction was that we had a very substantial investment in building in the area in which our present office building is located and the site for the new ~~building~~ ~~building~~ therefore, to have gone over to Eaton's would have defeated the purpose which we had in mind, of trying to co-ordinate our staff so that we might use that staff in a more productive manner.

Mr. Shibley: I see, so what you are saying is, ^{going} you have other buildings and other facilities that were ~~to~~ be integrated in the overall head office development?

Mr. Gathercole: Yes, and we also have parking facilities. ~~That's~~ ^{in this} that's another big problem; and I think Mr. Rotenberg refers ^{in this} to the cost of parking.

Mr. Shibley: Yes

Mr. Gathercole: ~~It was~~ ^{this} \$25, I think, a month.

That was another factor, ~~but~~ ^{this} it was only my own assessment, and I think it was shared by a considerable number of other individuals as well and I think it was based upon some pretty hard thinking ^{as to} whether we would realize our objectives by going ~~over~~ ⁱⁿ over and having ~~another~~ ⁱⁿ another more expansive structure, a set of offices, ~~which~~ ⁱⁿ which we might not own in the long run.

Mr. Shibley: Well, that last answer is not ~~consistent~~ consistent, though, Mr. Gathercole, with this proposal, is it?

Not

Mr. Gathercole: ~~It is~~ with this one, but I think in the other one, it seems to me, it was, as I recall.

Mr. Shibley: ~~As~~ ^{mean} I see. Yes, I think you ~~are~~ ^{mean} in terms of referring ~~to~~ the meeting you had with Volles and Rotenberg. They

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were not then ~~km~~ proposing anything other than a lease.

Mr. Gathercole: Yes.

Mr. Shibley: But in the submission that they made on January 20, they were proposing ownership after 30 years.

Mr. A Gathercole: Yes.

Mr. Shibley: All right. But your ~~was~~ evidence then, in summary, is that ~~you personally~~ you personally preferred your own site because you had other facilities in other buildings that were to form part of your complex.

Is that correct?

Mr. Gathercole: Yes, it was a ~~was~~ judgement on my part. I think it was shared by a considerable number of others, but it was just the assessment that I made; ~~was~~ obviously it was only one judgement that might be overruled by other considerations.

Mr. Shibley: Fine. Well, then let's go on to a second submission made to you under a letter dated February 7, 1972, from Yolles and Rotenberg, directed to Mr. Candy, which ~~was~~

Mr. Chairman: I believe this was the letter that we already have and it will become exhibit 55. Are there ^{Supplements} any ~~additions~~ to this?

Mr. Shibley: No, Mr. Chairman.

Mr. Chairman: All right, then, this is exhibit 55.

Mr. Shibley: Members of the committee, I direct your attention to page 1, paragraph 3. "We can advise you that we could create a similar structure, architecturally excellent and functionally superior, on your University Avenue site at a rental rate of \$4.50 per square foot per annum. This compares with an effective rate of \$4.00 per square foot per annum on the Eaton site." Then on page 2, the top of the page: "The effective \$4.00 comparison rate on the Eaton site is due to a reduction of 70 cents per square foot which arises from the sale of your site ~~at~~ ^{for} its \$7 million appraised value. You indicated this appraisal was made some time ago

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so, understandably, if its current value is higher, the effective rental would be further decreased in direct ratio to its increased value. With reference to the viability of two commercial floors at grade and below on your University Avenue site, we have this comment: Experience has indicated that you cannot create a retail environment in isolation. I am stopping here, Mr. Gathercole. I gather from the material that Yolles and Rotenberg were negative with respect to the development of commercial premises as part of your head office building.

Mr. Gathercole: That was their assessment, that it wouldn't prove to be very financially rewarding.

Mr. Shibley: Yes, and in this letter he goes on.

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M.F.

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Chairman: M r. MacBeth

(Mr. Gathercole)

~~it wouldn't prove to be very financially rewarding.~~

Mr. Shibley: Yes, and in this letter he goes on -
I think this is Mr. Tatham's letter - to tell about their
experience in the Richmond-Adelaide Centre Shopping ^{Concourse} ~~and~~ The
gist of it is that it has not been a good experience to this
point in time to try to develop a commercial area isolated
from established commercial areas. Is that not so?

M r. Gathercole: Yes.

Mr. Shibley: And he goes on in the last paragraph
on page two:

"It is our judgment that your University Avenue
site does not lend itself to retail values, notwithstanding
the million square feet of office building. Retail
facilities in such locations are ^{the} victims of short operating
hours and a five-day merchandising week, intensified by
the short daily demand period resulting from single-purpose
tenancy".

Then, on page three, the second paragraph:

"In contrast, ~~the~~ the market conditions available
on the Eaton's College Street site provide an on-going
24-hour, seven day a week, merchandising opportunity,"
and so on".

So ~~that~~ although they were making a submission with respect to
your own site, in conjunction therewith, they were making
representations to you against the development of commercial
premises and encouraging, I suggest, a second look at the
Eaton site?

Mr. Gathercole: That would be ^{my} ~~an~~ interpretation.

Mr. Shibley: I take it also, Mr. Gathercole, that this

was a circumstance that was considered by the Commission when
it came to do a comparative study of the four serious proposals,
was it not?

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M.F.

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Mr. Gathercole: Yes, it was. It was one of the factors.

Mr. Shibley: Yes, when we come to those overall resumés it is to this type ^{of} input that reference is being made? Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And for completeness, on February 8, 1972, *there was* a further letter from Y and R to Mr. Candy from Mr. Ken Rotenberg, its ~~president~~ president. ~~and~~ I won't bother reviewing it, but it is clear that they were still pursuing the possibility of being developers for your project on that date. We will just make that the next exhibit.

Mr. Chairman: 56.

Mr. Shibley: Now, then, the next contractor that I want to deal with, Mr. Gathercole, is Ellis-Don Limited, which was the fourth developer that expressed interest in doing this building for you, ~~and~~ I don't have any documentation from you to this effect except by a memorandum of events, but I understand that there was a meeting as early as July 14, 1971, by someone on behalf of Hydro with someone on behalf of Ellis-Don. Is that correct?

Mr. Gathercole: That is my understanding. M.F.

Candy met with Mr. Stewart of Ellis-Don some time in July, mid-July.

Mr. Shibley: Of 1971? Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And was that the initial communication with them?

Mr. Gathercole: This is what I am advised.

Mr. Shibley: Now, then, the documentation I have, and Mr. Gathercole, correct me if I am leaving anything out, but as far as documents received by me, the first document referable to this contractor is dated February 2nd, 1972, being the *proposal*

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(Mr. Shibley)

itself from this contract^{of} and I'm producing that letter to you.

Mr. Chairman: Letter from Ellis-Don Limited to Mr. Candy, exhibit 57, ~~and~~ dated February 2, 1972.

Mr. Shibley: I'd just ask you to, even if you ~~have~~ to turn around to the entourage that ~~is~~ ^{is} here from Hydro and ask you to determine whether ^{or} not this was the first ~~written~~ ^{written} communication referrable to Ellis-Don, either by way of internal memorandum or correspondence with that firm?

Mr. Gathercole: The first written document.

Mr. ~~Gathercole~~ Shibley: Yes, February 2nd.

Mr. Candy: Mr. Shibley, I am sure there is ~~in my files a~~ memorandum dated July that I wrote ~~of my meeting~~ with ~~Don~~ Smith of Ellis-Don.

Mr. Shibley: Mr. Candy, I'm obliged to you for saying that ^{but} we don't have that memorandum. I could hardly believe in light of the way your files have been documented that there wouldn't have been such a memorandum, but I have not received it. That's why I asked the chairman to make that check now.

Mr. Candy: It may have been just a meeting; I may not have had a memo. I thought I had one, but I may not have, write a lot of memos. I ~~was~~ ^{was} unfortunately ~~when I was in the States~~

Mr. Shibley: That's becoming obvious.

Mr. Chairman: ~~That~~ ^{It} is unfortunate that you write a lot of memos.

Mr. Candy: But in any event that was the first meeting with ~~Mr.~~ Mr. Stewart came in ~~first~~ first to see if I would see Mr. Smith and I did, and Mr. Smith ~~came in~~ came in, whenever that was, July 15, I think. That was the first meeting ^{with Don that} I had.

~~Mr. Shibley~~

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Mr. Shibley: Mr. Chairman, while Mr. Candy is standing and because he will be giving evidence; at the moment my concern is to be complete and I just want to be sure that there was no written material prior to February 2, 1972. If you come up with any, would you please produce it to Mr. Genest so that he can produce it to me? You can do that —

Mr. Genest: I'll undertake to do that, Mr. Shibley. We have nothing in our files to date but I will check.

Mr. Shibley: All right, thank you. Now returning to what is now exhibit 57, and I'm going over this really for the benefit of the members of the committee rather than to put something to the witness. It starts off: "I have gone over the figures that we would require for rent using a price of \$28 per square foot and \$30 per square foot." Just stopping there, members of the committee, I might alert you to this circumstance. Later on in the analyses that are made of the four proposals, there is a comparison laid-out of the four submissions and part of the comparison is the cost per square foot of constructing the building, because the four developers premised their submission on a variable in terms of cost of building as estimated by them.

Hydro people took the view that the quality of the building which they wanted constructed would require an expenditure of \$34 per square foot, which was the highest of the estimates made, that being the estimate of Canada Square. So they then went on to pro-rate the calculations and proposals on that footing. So that when we read the earlier material I think regard must be had for what these developers are saying they expect will be the cost of constructing a building for Hydro and.

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M.R.

(Mr. Shibley)

of constructing a building for Hydro and ~~formally~~ ^{formulate} some conclusion on your part as to whether the building could have been built for \$28, ~~for~~ \$30, ~~for~~ \$32, ~~for~~ \$34 per square foot, of the quality and of the unique features that Hydro were laying down. And, as I say, I mention this because in the earlier submissions you will have noted that in the case of Yolles ^{and} Rotenberg they pointed to the IBM Computer Building as the standard they were setting for the Hydro building. In the case of Horizon, for example, I think they pointed to the Travelers Building on University Avenue as the standard by which they were measuring their cost per square foot of construction ^{and} here we have ~~been setting~~ ^{Dr. Smith} setting out their submissions in this respect.

And he is saying he has done it on a twofold basis using a price of \$28 and \$30 per square foot. "The rent we would require using a building cost of \$28 per square foot would be \$4.71 per square foot. Using a building cost of \$30 per square foot, the rent required would be \$4.96."

"I would imagine that the prices for a \$27-29 building would be somewhere halfway... There could be some doubt in your mind that you could be told you were getting a \$28-per-square-foot building and in reality you might be getting a building that only costs \$26."

"When we had a final proposal put together for you ^{and} ~~XX~~ a building design agreed upon, we would then be willing to sign a contract with a fixed fee and an upset price where our figures were available to your auditors. Any savings made on the building could be split on a 75/25 basis with 75 per cent going to you and in this manner ~~it would be~~ you would be assured we spent the money as we previously stated."

~~We would also have~~ "You would also have the insurance of a guaranteed lump sum price. With these arrangements Hydro would get a building with excellent architecture built to their standards and they would derive any savings that could be obtained."

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(Mr. Shibley)

And this man is thinking in terms of a building \$28 to \$30 a square foot. And then comes a proposal and certain portions of it are set in on the very next page, two weeks ago we were requested to submit a proposal to build an office building for Ontario Hydro. Now that observation must be read in the context of the witness's statement that there had been verbal communication between Mr. Candy and a representative of this firm as early as July, 1971, but it was two weeks prior to February 2nd, of 1972, that they were asked to submit the proposal to build a building.

"We were told not to prepare drawings and specifications for the building at this time." That may be a significant statement. "In the past two weeks we have had every senior man in our firm working full-time preparing this submission. We have contacted financial agencies, banks, architects and so on." Then he gives the history and you can skip that to Page 2. "The larger IBM building in London was built two years ago. The main floor was designed entirely for computers and the building was built for \$2.2 million at a cost of \$19.42 per square foot."

~~Standard~~ Standard Life building in ~~Calgary~~ Calgary and he mentions other buildings & the Thompson building on Queen Street built in 16 months at a unit price of \$22 per square foot. "We do not believe that OHEPC will be satisfied with a building ~~costing~~ costing \$22. We think that a building costing \$26 per square foot would have excellent design and would probably satisfy the commission."

As I say, I have to tell you now so as to relate your understanding of the evidence, that ultimately Hydro proceeded on the basis that it would be more likely ^{its type} ~~its type~~ building would cost more like \$34. I should also tell you, in fairness to Hydro, that built into the contract with Canada Square is provision that if the building costs less, then there is a formula established

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(Mr. Shibley)

is
the contract with Canada Square ~~misses~~ provision that if the building costs less, then there is a formula established for reduction of the rent based on that lesser cost. But that was basic to the evaluation that was taking place. "We have based our calculations on a building costing \$26... Then, in the next paragraph:

"We are submitting this proposal as a joint venture with Sifton Properties ~~limited~~ ^{Ltd.}

Now, I should tell the committee also that that

arrangement was abandoned subsequently by this developer. And I think ^{it's also} ~~fair~~ fair comment that Sifton Properties ^{Ltd.} ~~limited~~ was intended to bring managerial experience to bear on this developer's proposal. And, again, I think you'll hear evidence there's written material ~~xxx~~ respecting the feelings of Hydro in ^{this matter} ~~that respect~~.

Then he mentions the architects they would retain, page 3, ^{And} ~~that~~ we've planned a building of 1,200,000 square ^{ft} ~~feet~~ with a net rentable area to Hydro of ~~50,000~~ square ^{ft} ~~feet~~ and an area of 50,000 square ^{ft} ~~feet~~ ^{+ which would be} rented to a bank and a restaurant... On page 4, the middle paragraph:

"I realize that this brief description of the building ^{is} ~~is~~ sketchy, but we were specifically asked not to go into detail on the building. And that is why we have used a square ^{ft} ~~feet~~ price with an idea of what could be obtained for that price. We ~~like~~ plan to have the building completed ~~within~~ in 33 months from time of acceptance...."

And then skipping over to page 6, let's see, these can be read in detail - additional homework for the members of the committee - but on page 6 he breaks out:

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(Mr. Shibley)

" In our calculations we have amortized the building for a 30-year period, at which time the entire building sold to the Commission for \$1. Based on ^a\$26 per square foot, gross building cost^s, the rental we would require would be \$4.46 per square foot. ^{Based} On \$24, the rental we would require would be \$4.21 per square foot... On \$22, the rental we would require would be \$3.99 per square foot."

You can see where the rental was rated in direct proportion to the cost of the building. Then in the appendix, ~~there is~~ ^{it states that} in the second paragraph, Ellis-Don has \$200 million worth of projects under construction at the present time in Ontario and Nova Scotia. The largest is a teaching hospital at the University of Western Ontario. "This is a \$27 million project which had been shelved by the government because it was over budget. Our firm showed the board how the building could be built within budget and the building is being built on a lump sum price and at \$27 per square foot."

~~Mr. Shibley~~ And that's all I have to point out respecting that proposal. ~~And~~ Again, Mr. Gathercole, I'm taking it that your earlier answer holds true for this proposal; that you didn't see the proposal as such. When I say you, incidentally, I identify you with other members of the Commission.

Mr. Gathercole: That is true.

Mr. Shibley: Yes. So, that if your information or participation is different from that of the Commission at large, you'll be sure to point that out?

Mr. Gathercole: Yes.

Mr. Shibley: At this point of time, February 2 and referable to this document, the dealings still were at the level of Mr. Candy and managers of the various departments.

Mr. Gathercole: That is true.

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Mr. Shibley: Then by a letter dated ---

Mr. Gathercole: Mr. Candy, I might ~~add~~ just add, Mr. Shibley, that Mr. Candy has recommended Ellis-Don on some other projects, you know, the building of a western regional office in London. We have used Ellis-Don, which is a very good company.

Mr. Shibley: Yes. All right. So that this was a firm also known to Hydro.

Mr. Gathercole: Yes.

Mr. Shibley: Then I produce to you, memo to the file of Mr. Candy, dated February 2, 1972, Exhibit 58, wherein he references a discussion with Don Smith, the President of Ellis-Don, ^{regarding the} ~~the~~ proposal they submitted for the head office, and he ^{that} ~~advised me~~ the following items are included in this price, " and he breaks out certain data. ~~And on~~

Tape H 122 follows

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4.30-4.35 p.m.
M.F.

H - 187

Chairman: Mr. MacBeth

(Mr. Shibley)

~~submitted for the head office and I advised me that the~~
~~following items are included in the price and he broke out~~
~~certain data.~~ On page two he says:

"I gave Mr. Smith a copy of the requirements and conditions which were included in the memorandum to the chairman, dated February 1. Mr. Smith advised he was aware of these items, all of which had been taken into account in preparing his price. I asked ^{Mr.} Smith to write me a letter stating the increase in rental for a building costing \$28, \$30, \$32 and \$34 ~~per~~ per square foot".

The next exhibit, Mr. Chairman, is a letter dated February 17, 1972, on the letterhead of Ellis-Don, to Mr. Gordon, who is the general manager of Hydro.

Mr. Chairman: This will be exhibit 59.

Mr. Shibley: You will notice in this letter, Mr. Gathercole, he says:-

"The specifications we were given were rather sketchy but we feel that we did put in a fairly comprehensive proposal. ^{We} also agreed to open our books to your auditors to check to make sure you were getting full value for your dollars spent".

Then in paragraph two:-

"I would appreciate if you would give ^{Barley} Vernon ~~Barley~~ our vice-president, a few minutes to explain our proposal and the background of our company. We did build your building in London, Ontario, and this is how we got to know Ken Candy. I don't know Gord McHenry's title ^{or} he knows me personally... I would appreciate the opportunity of meeting you..."

Now, did you see a copy of this letter at any time prior to these proceedings?

Mr. Gathercole: No, I received no copy of it, Mr.

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M.F.

H - 122 - 2

(Mr. Gathercole)

Shibley.

M r. Shibley: All right. You will notice there is a hand-written note in the upper left-hand part of the document, and I am reading it as follows:

"Nothing to be gained by a meeting at present.

Matter is in Chairman's hands. Company well and favourably known to us but this is not exactly their dish of tea if done on lease-purchase financing, etc."

Do you see that notation?

Mr. Gathercole: Yes, I do.

Mr. Shibley: Do you know whose handwriting that is?

Mr. Genest: I understand it is Mr. Sissons', *Mr. Shibley*.

Mr. Shibley: Thank you. So that Mr. Sissons' comment, firstly, is that there should not be a followup meeting with them and he puts in the comment - "matter is in ~~the~~ chairman's hands". What does he mean by that?

Mr. Gathercole: Well, that I don't know. I presume that he meant that it was subsequently going to come up before the chairman and the commission for consideration. This is dated February 7th, 1972, and ~~they~~ ^{these} were memoranda being prepared which were being submitted subsequently to me.

Mr. Shibley: Would you agree with me, Mr. Gathercole, that the notation is basically negative toward this particular developer? ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Mr. Gathercole: Yes.

Mr Shibley: For this particular project?

Mr. Gathercole: Yes. It is an excellent company, the question is whether this company, a general contractor, has the experience in order to ~~xxxx~~ undertake a project of this kind, and of this dimension.



Tape H - 123 follows

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(Mr. Gathercole)

~~to come to undertake the project of this kind and of
this dimension.~~

Mr. Shibley: Then again for completeness---

Mr. Deans: May I ask a question?

Mr. Shibley: Yes.

Mr. Deans: Why would they be permitted to pursue it

to such an extent ~~am~~ if in fact they were to be ruled out because they hadn't the expertise in the field and that was already common knowledge to the people who were carry^{ing} ~~ing~~ on the discussions with them?

Mr. Gathercole: They had an assessment of the company, but on the other hand they were carrying on an assessment or appraisal of ~~newly arrived~~ a representative group of contractors and developers with a view to ultimately arriving at some decision. This is a judgement that is being exercised by one individual, ^{arrives at an} but because one individual ~~arrives at an~~ assessment of a company doesn't mean that everybody else is going to arrive at that judgement.

Mr. Deans: YOU are saying then in fact the note ^{Simply} was ^a personal view of Mr. Sissons?

Mr. Gathercole: Yes I am.

Mr. Deans: It must have carried some weight.

Mr. Gathercole: Well he is a very well qualified individual.

Mr. Deans: It just seemed odd ~~that~~ knowing that, that the matter would have gone to such an extent, that it would

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(Mr. Deans)

have gone through all the proposals being prepared, knowing full well that they hadn't really undertaken anything of that nature before.

Mr. Gathercole: It's a matter that Mr. Sissons

~~doesn't~~ ~~make~~ make all the decisions, it's a matter that he's ~~giving~~ giving expression to his own point of view. On the other hand, he obviously says, Ellis-Don may not be the most appropriate company for undertaking this type of project despite their confidence as contractors; ~~on~~ ~~the~~ the other hand it shouldn't be ruled out.

Mr. Deans: I'd read it to say that they are ruled out; there is nothing to be gained by meeting them. The ^{is in} matters ~~in~~ the chairman's hands."

~~Interruption by~~ An hon. member: ~~I~~ At present.

Mr. Deans: Well, "at present," I'm sorry, "the matter is in the Chairman's hands, the ~~company~~ company is well known to us; it is a good company, but this isn't their bag ~~of~~ dish of tea." I would have called it "cup of tea" by the way.

An hon. member: That's an engineer speaking.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Gathercole, do you know why Ellis-Don were given such a short period of time? I notice in their proposal, which is part of exhibit 57, that it ^{opens} ~~opens~~ up with the phrase, "Two weeks ago we were requested to submit a proposal", and on page four it specifically states, "I realize this brief description of the building is sketchy, but we were specifically asked not to go into detail on the building and that is why we have used this square foot price with an idea of

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C.B.

(Mr. Renwick)


what could be obtained for that price". Have you any idea why Ellis-Don would be given such a short period of time to come up on a comprehensive proposal, which apparently they worked day and night on for some two weeks in order to put in a proposal which I think is referred to elsewhere in exhibit 57.

Mr. Gathercole: My understanding, Mr. Renwick, is that Mr. Stewart and Mr. Smith of Ellis-Don were in touch with Mr. Candy in respect to the building, but ~~is not~~ ^{during} the stages that Mr. Candy and his associates were exploring what type of plan, what type of arrangement might be suitable for Ontario Hydro, they were suggesting, "Don't proceed with the preparation of a lot of elaborate plans". Now we had had an experience where we had our ~~architectural~~ ^{architectural} plans prepared at very considerable expense and we ~~had~~ ^{had} postponed ^{them} so we were saying that we'd made a mistake. Mr. ~~Candy~~ Candy, as I understand ^{it's} ~~was~~ saying to some of these people "We want to proceed and arrive at some conclusion as to the route upon which we are going to proceed, and we don't ^{want you} to become too deeply involved in preparing a lot of plans at great ~~expense~~ expense." Now that's as I understand it. So there was an extended period there until Mr. Candy, I think, ~~asked~~ invited a number of representative developers and contractors who ^{had} indicated an interest and ^{for} whom he had admiration and respect to make some submissions, ~~and~~ I think that's how it came about.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: The last letter in the sequence....

H 124 to follow



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M.F.

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Chairman: Mr. MacBeth

(Mr. Shibley)

~~The last letter in the sequence~~ of correspondence with Ellis-Don is a letter dated February 22nd, 1972— exhibit 60A and it is just a reply. ~~and~~ You will notice in the second paragraph:

that there is
"I do not think anything to be added or any advantage ~~in~~ your meeting with Mr. Gordon or myself at ~~the~~ present."

This appears to be written by Mr. Sissons again. ~~Is that~~ correct, Mr. Gathercole?

Mr. Gathercole: Yes, I think it is.

Mr. Chairman: I think at this point we will take a break. I don't know whether Mr. Gathercole needs it, ~~but~~ or Mr. Shibley, ~~I~~ I rather think the latter, ~~and~~ We will take, for Mr. Shibley's sake, a 10-minute recess.

Tape H - 125 follows

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M.F.

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Chairman: Mr. MacBeth

Mr. Chairman: We will reassemble.

Mr. Shibley: The next document, Mr. Chairman, is the proposal of Canada Square dated January 24, 1972, on the letterhead of that company, which we could make exhibit 61; and again, if I may, for the benefit of members of the committee, just go through this with you, you will notice it starts,-

"We are pleased to ^{SUBMIT} ~~submit~~ to you plans, indicative specifications, ~~rental~~ rental rate and lease-purchase conditions relating to your proposed new head office".

^{will} We come back to the question of the enclosures later on.

"The specifications are indicative because ^{AS} you will notice, they relate specifically to the Trans~~Am~~^{Am}erica Building which constitutes phase 2 of Canada Square".

And skipping to the next page, at the top of the page, the reference is to the fact that Hydro had ^{specified} a 150 foot-candle power at desk level and a floor capacity to

accommodate 150 pound point ~~requirements~~

I should tell members of the committee there will be evidence that these are exceptional specifications - 100 foot-candle power being considered acceptable for most such buildings, and this will all go to the element of what should this building be expected to cost.

Then you will notice also in ~~that~~ paragraph,-

"All under floor duct work for telephone and electrical floor outlets are to be deleted, access to be provided by conduits within the ceiling space".

Then, in design philosophy, the second sentence -

"In our various meetings with members of your organization it became evident to us that in structuring our proposal we should offer you a unique and outstanding building rather than one of merely high quality".

So there is reference there to meetings with members of the

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Hydro organization, and skipping over to page 3, in the second paragraph,-

"In order to offer you these features without sacrificing the quality of the building, we are obliged to charge a slightly higher rental than would be applicable to a less intricate design".

Then skipping to page 4, he sets out by schedule the feature and additional cost ~~per square~~ ^{FOOT} ~~foot~~, and you will notice that it breaks out and totals 92 ~~cents~~ ^{cents} additional cost per square ~~foot~~ ^{FOOT} and it concludes:

"We estimate that the overall cost of the building will be approximately \$34 per square foot. ^{In} An Attempt to illustrate these features and the ~~same~~ general extraordinary quality of the building, we are enclosing architectural drawings".

Now again I refer to this, or bring your attention to it, because you will note ~~the~~ the substantially higher estimate of cost of construction of \$34 as compared with that advanced by other developers, and the rationale that this developer advances in support of that increased cost.

Then the next paragraph deals with the lease-purchase arrangements:

"In order to pass on to you the benefits of arrangements we are in the process of finalizing to finance the project we are proposing a lease-purchase for a term of 30 years commencing on closing date of financing. Our tentative financing arrangements involve \$20 million in Swiss francs ^{AT} ~~and~~ an interest rate of six and a half per cent per annum. The balance in either US or Canadian funds at an interest rate of approximately seven and three-quarter per cent.

Based upon these arrangements the ~~same~~ rental rate would be \$492 per square foot per year. ^{These} ~~arrangements~~ ^{have been} ~~not yet~~ finalized and will require your full co-operation in

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assisting us to set up the necessary corporate structure
to be able to complete them. If we are unable to
borrow the required

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~~the proposed~~ funds at these favourable rates there will be a pro rata increase in the rental rate up to the maximum of \$5.25 per square foot per year. As set out in the form of lease attached and shown as Schedule A, the rental rate will be adjusted either up or down, from time to time, to take into account fluctuations in the exchange rates between the Canadian dollar and the currency or currencies in which the loans are made.

"The rental will commence at the time you occupy the building." I might say to members of the committee, just before you go on, this is the proposal but it was the subject of subsequent negotiations, very intense negotiations, by representatives of Hydro and more particularly their counsel, Mr. McCallum and Mr. How^user, at least one of them will be giving evidence before you. And also Mr. Bradshaw, who is a solicitor for Canada Square, will be called to testify as to those negotiations.

Now, some of these terms therefore were varied from this outline and these terms should not be taken as being the terms of the ultimate lease purchase agreement with Canada Square but rather was the outline of their initial proposal to Hydro. So I caution you not to jump to the conclusion that all of these terms met with acceptance by Hydro.

Then it continues on the bottom of Page 10; "At the end of the term the building will be sold to you for the sum of \$1.00." On page 6, paragraph 2 sets out the method of measurement ~~and will be approximately~~ ^{the measurement is 2,283,000 square feet} \$1,283,000 square feet, resulting in a gross annual rental of \$6,312,000 from which will be deducted the rental payable by us for the ~~the~~ commercial areas of \$664,000, leaving a net annual rental of \$5,647,000."

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Now you will notice in the next paragraph it talks about a lease of the land for a term of 50 years which seems at first ^{GLANCE} ~~seems~~ to be inconsistent with the 30-year term of the building lease, but this is not to be taken as anything more than to comply with certain requirements of U.S. lending institutions. You correct me, Mr. Gathercole.

Mr. Gathercole: Yes, that is correct.

Mr. Shibley: If I am summarizing incorrectly.

In fact, it is still a 30-year deal. At the end of 30 years the building and land would revert to Hydro for the price of \$1.00, and the 50-year term of the land lease is really a formality rather than a reality.

Lease ^e terms ~~and~~ ^{are set out} ~~costs and allowances~~ on Page 7. ^{on} Page 8 a certain breakout is provided, and ^{on} Page 9 our architect, K.R. Cooper, is proposing to use Adamson and Associates as consulting architects and Tamblyn Mitchell as mechanical engineers.

Now you will notice the enclosures include two perspectives, drawings from another job - numbers one to ~~ten~~ ¹⁰ prepared by Mr. Cooper, specifications for the ~~Transamerica~~ ^{Transamerica} Building and a copy of the lease which I believe to be ~~an~~ I'm only speculating because I have not received these documents but I believe the lease was probably the lease for the OISE building. Is that correct?

Mr. Candy back there is nodding his head and so.

Mr. Candy: Yes.

Mr. Shibley: ~~As you~~ what is happening here is that ^{perspectives.} sample documentation is being provided as well as ~~perspectives~~. Now Mr. Gathercole were these ~~perspectives~~ ^{perspectives} of a suggested building for your new head office?

Mr. Gathercole: That I don't know.

Mr. Chairman: That is Exhibit 61.

^{Shibley} Mr. ~~Gathercole~~: Thank you.

Mr shibley


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~~Mr. Chairman:~~ Now the next document ~~is~~ really pulls all of this material together, members of the committee and Mr. Chairman. It's a document dated February 1, 1972, compiled by Mr. Candy. I would ask that to be tabled as the next exhibit.

Exhibit 62.

Mr. Chairman: ~~is~~ I might say that we are not properly identifying all these exhibits. The first day or two I was careful to note accordingly. I haven't been noting recently. These exhibits are presented by Ontario Hydro and I think Mr. Genest will let us know if he has any



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(Mr. Chairman)

Ontario Hydro and I think Mr. Genest will let us know if he has any exception to them, and I am relying on counsel to have these properly identified later on by their proper ~~authorities~~ ⁷⁹⁹⁷ authors.

Mr. Genest: I think I have stipulated, Mr. Chairman, that these documents, when they are presented, come from Hydro files and we agree they are genuine documents and ~~can be~~ ⁷⁹⁹⁷ considered as such.

Mr. Chairman: Right.

Mr. Shibley: Mr. Gathercole, I see this document is directed to you as chairman. Do I take it, ~~that~~ therefore, that it is the first analysis of a comprehensive nature that was submitted to you as chairman of the commission?

Mr. Gathercole: Yes.

Mr. Shibley: And with respect to the earlier communications with the four developers in question, aside from those instances to which I have already made reference, and about which you have given evidence, you had no other personal ~~and~~ involvement with them?

Mr. Gathercole: Not up to this date; none whatsoever.

Mr. Shibley: Right. And neither had you received any data from your staff?

Mr. Gathercole: No.

Mr. Shibley: Now in respect of this memorandum, ~~members~~ ^{members} of the committee will note that it starts off:

"Preliminary proposals have been received from four developers on an informal basis."

So that is the description given of what you just had exhibited. ~~Furtherxxxxxx~~ Paragraph 2:

"Each developer was shown the previous design for this building, conceived in 1968," which may be a statement of interest to you.

"They ²were also shown the cost estimate for that building which was applicable as of January 1, 1970.

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(Mr. Shibley)

"They were given the following verbal information regarding the conditions and requirements:"

So that that can be taken as what Mr. Candy ^(will say) will be the information provided to the four developers, and I don't think we need to go into all the architectural detail; but rather ~~the~~ skip over to page 6. And I would like to refer your~~y~~ attention particularly to paragraph 5, "Financial." You will note the financial requirement was that ~~XXXXXXXXXXXX~~ the developer shall state the cost and source of money; ~~XXXXXXXXXXXX~~ pay all professional fees, respecting ~~XXXXXXXXXXXX~~ design, construction and financing; ~~XXXXXXXXXXXX~~ Enter into a 30-year lease-purchase agreement; pay ~~for~~ all permits; provide a complete building design to the approval of Ontario Hydro, (Which is a circumstance I think of significance); Provide a building superintendent and staff to manage and maintain the building, including the various ~~kind~~ things; State a cost per square foot rental per year to be charged to Hydro to cover the financing, maintenance and management of the building, except for certain items noted. "State the cost per square foot, per year, you are prepared to pay Ontario Hydro for commercial areas you will be responsible for subletting... State the cost per square foot for the construction of the building..." Hydro will pay realty taxes, during and after construction, realty and business taxes on the land and building subsequent to occupancy; electrical energy charges; security guards; replacement lighting tubes, and so on.

And then there is a summary of the proposals on page 8, ~~with~~ each of the four developers set out - Ellis-Don; Y and R; Canada Square; and Horizon, ^{their} ~~the~~ cost of money; capital cost ~~that's~~ for construction of the building, ^{are} ~~rental~~ per square foot, of office (and storage in some cases); refund ~~for~~ to Hydro for commercial areas; and the cost per square foot for management.

Then on page 9 ^{are} ~~five~~ set out additional costs to be payable by Hydro for a total of \$1.75, and by comparison...

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points
\$1.75 and by comparison it ~~works~~ out the rental at 77 Bloor Street. ~~Then~~ then, on page 10, you will notice at the top of that page, Rent per square foot per year for a higher class of building, as submitted by Canada Square Corporation, \$4.92; ^{for lighting} cost per square foot per year for electric energy ~~providing~~ ^{foot-candles} based on 150 ~~foot-candles~~ 30 cents, Cost per square foot per year for realty and business tax \$1.45; ~~and~~ ^{the} total cost per square foot \$6.67 per year for ^{the} new building. All costs of ~~xxx~~ utilities and labour would be subject to escalation."

And then, the conclusion - "The submission by Canada Square Corporation included a set of design drawings for a curved building of a high quality which would enhance the corporate image of Hydro, whereas it is very doubtful that the low figure of \$26.00 per square foot submitted by Ellis-Don Ltd. is sufficient to provide a building of ~~the~~ ^{the} character and quality required for our purposes on this very important and prominent site. The design of the curved building would be very similar in character with the Treasury building recently constructed by the province ^{via} government on the north-east corner of the same intersection."

Now, Mr. Gathercole, was this memorandum distributed to other members of the commission?

Mr. Gathercole: No, it wasn't Mr. Shibley.

Mr. Shibley: What action was taken by ^{you} upon its receipt?

Mr. Gathercole: Well, I discussed the matter with Mr.

Gordon and Mr. Sissons and suggested a further analysis be made of this whole - of all the proposals.

Mr. Shibley: What kind of analysis?

Mr. Gathercole: Well, that some ^{broader} analysis of all the financial and other issues be undertaken.

Mr. Shibley: Yes, now then I suggest to you that this memorandum again seems to be a memorandum wherein Mr. Candy had a preference for ~~xxxx~~ the submission made by Canada Square. Do you agree with me as to that?

I would say yes.

Mr. Gathercole: Yes.

Mr. Shibley: Now, I put it to you also that the

Mr. Gathercole: There was an inference in that

Mr. Shibley: Yes, and again notwithstanding this

Mr. Shibley: All right. Now then, I would like

and present to you a memorandum dated March 23,

Mr. Gathercole: Mr. Nastich is the assistant general

Mr. Shibley: Exhibit 63. Now, I will refer members

"Now that we are coming to the final decisive stages leading to construction of a new office building, I believe we must ensure that all possible alternatives and cost implications are carefully examined and evaluated." Now, just stopping there, Mr.

Mr. Gathercole: Yes, he definitely was. He was

Mr. Shibley: Yes, and then it goes on and he says:

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"Our recent experiences with Beverley and the EHV ~~transmission~~
~~line~~ clearly teach~~es~~^{us} that our case must not only be solid but
capable of being explained in simple terms to public officials
and the general public. If this is not done and public
scrutiny does find that some part of our reasoning is not
fully substantiated, the whole project becomes (and rightly
so) suspect. I, therefore, strongly recommend that our
substantiate report cover all ~~relevant~~...

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~~For strongly recommended that a report be prepared~~
relevant aspects and be looked upon in the same light as a lawyer's brief. Now if it is like my brief, I can sympathize with the man. "I have asked Messrs. Dean and Mink to meet with Mr. K.H. Candy to develop a report outline which meets the above objectives.

"Some of the areas I believe should be covered are as follows:

"1. Why don't we use the public tender approach?

"2. Should we not consider the following three aspects separately so that we can get the best deal on each of the three? i. - Financing. ⁱⁱ~~ii~~ - Construction. ⁱⁱⁱ~~iii~~ - Maintenance.

"3. What use will be made of the already prepared architectural drawings?

"4. What criteria will be used in ~~xx~~ selecting each of the aspects in Item 1 above?

"5. What are the savings to Ontario Hydro in constructing (or having constructed) an office building to house all its staff?

"There are other questions and these will be provided by the task force looking into this."

Now when he references a task force, what is he talking about?

Mr. Gathercole: He is referring to a group who were examining into ~~the financial and other aspects of the~~ matters; that is, ~~the~~ undertaking the financial and other analysis of the objective of realising an administration head office.

Mr. Shibley: Mr. Gathercole, again, as of March 23, 1972, when this memorandum was written, had any material yet been submitted to members of the commission for a decision as to the selection of the developer?

Mr. Gathercole: No.

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Mr. Shibley: So can we take it that your evidence is that this workup material, that was being done by people such as Mr. Nastich and Mr. Mink and others, that this was all geared towards what would ultimately be a submission to the commission?

Mr. Gathercole: Yes.

Mr. Shibley: Is that correct?

Mr. Gathercole: That is true.

Mr. Shibley: And I noticed here, he talks about considering the three facets of the deal so that you could get the best deal on each of the three. I gather that, notwithstanding that you had four proposals in hand from four developers, that you were now getting ready to undertake negotiations with him?

Mr. Gathercole: Yes, that is true.

Mr. Shibley: I now present you with a further memorandum dated March 27, 1972, from Mr. Mink to Mr. Candy. Who was Mr. Mink? I know he is no longer with Hydro.

Mr. Gathercole: Yes, He was a financial analyst in the department and a very competent individual who is now, I think, associated with the National Energy Board in Alberta, I believe.

Mr. Chairman: Exhibit 64.

Mr. Shibley: Now Mr. Mink's memo to Mr. Candy⁽¹⁵⁾ as follows: "I would appreciate it if you would prepare the necessary text^(and) documentation for inclusion in the report on the following topics".

He's talking about the ~~ex~~ report which Nastich said should be prepared. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And then he enumerates them; what general design philosophy is recommended, the advantages and disadvantages of adopting a public tender approach against the single developer approach.

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Third,

"provide an outline on the screening of potential developers and reasons for eventual selection of those currently under consideration."

Now, when he references those currently under consideration, to whom is he referring?

Mr. Gathercole: Well, the four proposals that I thought are would have ~~through~~ the four proposals that had been received

~~Mr. Shibley. And then it goes on and he says I~~

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Chairman: Mr. MacBeth

(Mr. Gathercole)

~~proposals that had been received.~~

Mr. Shibley: And then it goes on, and he says:

"I will forward a preliminary draft outlined for your consideration and comment, to provide a more comprehensive picture of the submissions made by the various suppliers".

I suppose he means various developers, is that correct?

Mr. Gathercole: Yes, I would think so.

Mr. Shibley: "Could you please obtain the following data from them?"

Then he lists Y and R and he lists things that should be inquired of ^{as} from them, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And then the same for Canada Square?

Mr. Gathercole: Yes.

Mr. Shibley: And then further data to be ~~collected~~ ^{collected} from Horizon, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: Do I take it, Mr. Gathercole, ~~that~~ having regard for the exclusion of Ellis-Don from among the four developers who were to be followed up, that they were not considered to be in serious contention for this project?

Mr. Gathercole: Mr. Shibley, I am not able to answer that. I find it rather unusual that they weren't included. It may be that their omission is a reflection of a conclusion, tentative as it may be, that excellent as the company is, ~~this~~ ^{this} may not be the field in which they were going to provide an appropriate solution for us, but on the other hand, it may have been just some omission for which I haven't any explanation.

Mr. Shibley: All right. Then at the bottom of page 2, it mentioned in your memorandum ~~that~~ ^{that} some of the mechanical specs were not ~~explicitly~~ ^{explicitly} outlined to each developer for

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preparation of their ~~pro~~posals. Please let me know which of the proposals may be affected by this and to what extent".

Then the next document I want to produce to you; ^a~~the~~ document dated March 30th, 1972, which is a memo from Mr. Candy to the file.

Mr. Chairman: Exhibit 65.

Mr. Shibley: I notice, Mr. Gathercole, it starts off

"I discussed the four items in connection with the proposal from Canada Square outlined in the memorandum from Mr. F. J. Mink, dated March 27th, with Mr. Moog today, with the following results,"

~~and~~ Then he breaks out the data, and the third thing is:-

"The financing arrangements are secure insofar as Swiss capital is concerned at six and a half per cent plus government tax which would be absorbed by the developer. The balance of ~~appears~~ approximately \$20 million can be obtained from the Equitable Life in the US at possibly eight per cent interest under which conditions the rental rate per square foot per year would remain at \$492."

Then the letter carries on with other information. In paragraph 4, referable to obtaining funds from Switzerland,

"All of the commercial areas would be taken over by the developer from the outset. No rental would be charged to Hydro, and so on".

Now would you agree with me, Mr. Gathercole, that this memorandum of Mr. Candy's only covers the follow-up with Canada Square as for the information which Mr. Mink suggested should be pursued in his memorandum of March 27th, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And I should tell you, and I again ask your counsel to undertake to make a search, ~~that~~ ^{that} I found no written material among the documents provided to me of the result of any similar follow-up with Yolles ^{and} Rotenberg or

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Horizon Development, both of which were companies referred to in Mr. Mink's memorandum of March 27th. Are you aware of any such follow-up?

Mr. Gathercole: I am not aware of what took place at that time.

Mr. Shibley: ~~But~~ I am going to be calling Mr. Candy, Mr. Chairman, ^{but} I just want to put him on notice that I am intending to inquire as to why the only documentation I have seen indicates a follow-up with respect to information ^(for) as ~~for~~ Canada Square and not for the other two companies. You can't provide that today?

~~Mr. Gathercole: No, I am not able~~



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~~(Mr. Shibley)~~

~~as for Canada Square and not for the other two companies. You can't provide that today?~~

Mr. Gathercole: No, I am not able to.

Mr. Shibley: Then the next document, Mr. ~~Chairman~~ Chairman, is a document dated April 6, 1972, being a memo from Mr. Candy to Mr. Mink.

Mr. Chairman: Exhibit number 66.

is my explanation
Mr. Shibley: And you will notice it starts: "The following of paragraph 2 in your memo of March 27." It says: "In my ~~opinion~~ opinion, it is ⁱⁿ the best interest of the commission to construct the above building through the selection of a single developer rather than the conventional public stipulated ~~tender~~ ^{SUM} tender system, for the following reasons: (a) It will not be necessary for the commission to retain architectural consultants; (b) If a general contract was awarded on a stipulated ^{SUM} basis for ^A projects of this size, the construction of which would extend over a period of three years, the ~~contractor~~ ^{contractor} would have to protect himself by including considerable escalation in his price, which the owner would have to pay whether or not it proved to be ~~as~~ necessary, depending on the state of the economy. The developer would act as a project manager, doing some of the construction himself and awarding ~~separate~~ separate contracts as required, thereby paying the going rate at the particular time; (c) The ~~contractor~~ would not be involved in extras and credits on the contract, except for very major changes, ^{as} ~~and~~ minor changes in the capital costs, would have a negligible effect on the rental rate; (d) All general contractors have an overhead to cover the cost of ^{ESTIMATING} ~~estimating~~ projects which must be paid for on the contracts they obtain, whereas a developer ^{who} is providing the full service only estimates on projects he proceeds with; (e) A considerable saving in time would be effected by the developer method." I think this may become a matter of some import to the committee to note that, "As the construction of the building could start about eight months earlier, as it would not be necessary to

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complete all drawings and contract documents before proceeding with the excavation and foundations for the building. The drawings could be prepared while the construction of the building is progressing. This would result in the completion of the building eight months earlier than the conventional method and represent a saving for the commission of \$65,000 per month or \$520,000."

Now, finally, Mr. Chairman, I ask to table ^{as} the next exhibit a document which is marked - my copy is marked "Graph, Ontario Hydro New Office Development, prepared by K. H. Candy and F. J. Mink, dated April 10, 1972."

Mr. Chairman: 67.

Mr. Shibley: Exhibit 67. Well, Mr. Gathercole,

I take it that this document which is now presented to you is the sort of summation of all of the input that we have been reviewing in terms of exchange of memoranda, investigation, analysis and so on. Is that correct?

Mr. Gathercole: Yes, it is.

Mr. Shibley: And did you receive this document?

Mr. Gathercole: Yes, I did.

Mr. Shibley: Was it distributed to all members of the commission?

Mr. Gathercole: No, it wasn't. It was still in the working paper stage.

Mr. Shibley: This is a document, members of the committee, which I think is going to require some careful consideration on your part, but I would like to go through it with you and highlight those portions.

Mr. Gathercole: ^{Mr. Shibley} ~~Shibley~~, could I just mention ~~and~~

Mr. Shibley: Yes?

Mr. Gathercole: That a copy was distributed to me, sent to me, and the general manager, Mr. Sissons, and senior management.

Mr. Shibley: And the purpose of that distribution would be what?

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(Mr. Gathercole:)

in order that we would have an opportunity of reading the analysis, which ^{was} ~~is~~ done in a comprehensive way, of a number of proposals.

Mr. Shibley: Okay. Now going immediately to page 2

I notice in the ^B ~~Dea~~ part:

'If sufficient formal assurance can be received that the terms as outlined in the ~~recent~~ ^{lease} purchase proposal of Canada Square or Horizon Development are as indicated, the selection of a package arrangement could be considered.'

Now stopping there, Mr. Gathercole. At this point in time, April 10, 1972, was the choice being narrowed down to these two developers?

Mr. Gathercole: I would say, to the gentlemen who were ⁱⁿ preparation of this submission, it was, yes. On the other hand, ~~it~~ ^{you} ~~could~~ ^{it} exclude all the others. What I mean to say by that ^{is} ~~it~~ was still open, but undoubtedly in the minds of these two analysts it was, yes.

Mr. Shibley: Then it goes on:

'C. If the terms should deviate significantly from those indicated, favour should be given to ~~the~~ public tendering approach as originally

~~intended.~~

by this was it meant public tendering for a lease purchase or public tendering on a building to be built and owned by Hydro?

Mr. Gathercole: I'm sorry, sir.

Mr. Shibley: I am trying to understand what he means when he says "public tendering". Was he talking about ~~a~~ ^{public} tendering for a lease purchase? On page two, C portion.

Mr. Gathercole: I would say public tendering meant issuing an invitation to a selected group of developers or contractors to bid on the project.

Mr. Shibley: On a lease purchase basis?

Mr. Gathercole: A lease purchase basis.

Mr. Shibley: All right. Then on page 3, under the paragraph style ~~197~~ 1968 proposal, the second sentence:

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(Mr. Shibley)

"It WAS proposed to construct the building"

(This is the original proposal)

"On the 2 $\frac{1}{2}$ -acre site at the southwest corner of ~~Howard~~ ^{College} Street, ^(ac) required by the commission about 196 $\frac{1}{2}$ at a cost of about \$2 $\frac{1}{2}$ million, and is now estimated to have ^a market value of approximately \$7 million."

And then it describes what went into that original design. It was a two-phase building, etc. etc.

Skipping over to page 5;

"Delay in construction, 1970."

"All drawings and contract documents were completed by the end of 1969."

That may be an important statement. In fact, you were ready to submit ^(your plans and specs on) ~~the~~ the original design for tender when those plans were deferred, and ultimately they were scrapped. Is that right?

Mr. Gathercole: Yes.

Mr. Shibley: Then, topically, on page 6 ~~there is~~ there is a description by Mr. Candy of the effect of decentralization of personnel. On page 7, economic cost of geographic ^(scale) ~~state~~ of employees. The members of the committee will later find that there are schedules, ^{appended} ~~appendix~~ to this report, showing the breakdown ^{out} of these costs, or what Mr. Candy calls geographic ^(scale) ~~state~~ of employees. Skipping over to page 10, you will note on the top of ^{that the} the page a change in thinking ~~including~~ including:

"It HAS also been considered advisable to introduce some commercial property below ground level to aid in financing the project. While many facets of the building originally designed should be incorporated into a new design, the major changes in space requirements, deletion of computer facilities, layout ~~for~~ ... for efficient longterm use ~~of this~~ space utilization... and ^{the} incorporation of more revenue-producing

(Mr Shibley)

commercial space would indicate that an entirely new approach should be made to the problem."


Now that is very basic to the ~~recommendation~~ recommendation to abandon the original plans.

"^{THW} Financing Alternatives is an important portion of this report.

^{ra} The following approaches can be considered the most practical ^(iv) alternate means for financing the project:

1. Generating the necessary capital ~~as~~ ^{as part of the} normal process of debt financing.
2. Entering into an agreement ^{with a domestic} ~~with a domestic~~ or foreign financial institution to provide ~~xxxxxxxxxxxxxxxxxxxx~~ a first mortgage bond on the building, which is secured by the assets of the building.
3. Use of available funds through the pensinn fund.
4. Entering ~~into~~ into a lease-purchase agreement with ~~the~~ ^{the} developer.

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(Mr. Shibley)

- iii) ~~use of available funds~~ through the pension fund,
- iv) ~~enter into a lease purchase agreement with the developer.~~

Then there is a reference to internal debt financing. You will notice it summarizes what we have been going over.

"In view of the continued expectations of heavy capital demands by Hydro for our capital construction programme over the next few years, this form of financing has been discouraged by Treasury."

Now I am taking it, members of the committee, that this refers to Mr. Farmer's memorandum of September 11 - I am going by ~~a~~ memory - of 1971 and you will remember the circumstances surrounding that. On September 3, it was, of 1971, ~~the~~ surrounding that is the evidence referable to/Safrance proposal for financing.

"It is maintained that while most marginal borrowing will likely be secured in foreign markets, it is desirable to favour alternate financing sources that may be available. It is conceivable, however, that should costs of alternate sources be unreasonable relative to internal financing, this form of financing should be seriously considered."

"External Financing."

"It is the opinion of our legal people that some problems could arise in arranging financing secured by the building as ^a specific asset."

You will remember the documentation from the legal staff in that connection that is now an exhibit.

"These problems are ~~many~~ mainly due to agreements in our West German bond purchase of August 4, 1969,



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(MR. SHIBLEY)

whereby we "agreed not to secure any bond ~~xxxx~~ issues or other security," etc."

And we have been over that topic.

"Use of Pension Fund.

^{it}
"Legally/is the opinion of the Law Division that the aggregate amount allowable for internal investment from the pension fund may be no more than 10 per cent."

And we have reviewed all that data, ^{that} we have gone into.

You know the back~~ground~~ material that went into this part of this report, and ^{at} the top of page 13, you will notice ^{it says} it was considered "some years ago and, at that time, rejected by our auditors." Again you have the support material in evidence on which that conclusion was formulated.

Then reference is made to the Lease-Purchase Agreement, and I direct you immediately to subparagraph 1:

"The financing would appear to be no problem.

The source of capital would likely be foreign and held in the form of first mortgage."

I ask you to note that because again, in his thinking, it is clear that - well, I should advise the committee that when you get to the source of funds, the one developer that was predicating his proposal on that footing was Canada Square.

"It would not dilute our conventional capital sources since the available funds would likely originate from a source intended for investment in real estate in any event."

"2. The tax advantages available to the developer could have a net effect lowering the financing cost to the developer. By retaining ownership, the developer takes advantage of capital cost allowances which would normally not be ~~xxxx~~ available to Hydro. The effect of this on the agreed annual rental would depend on the specific

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circumstances of the developer, his willingness to negotiate mutual benefits and his prospects of tax deferrals."

~~And I think~~ I think ^{that} is an important statement.

Then "Construction and Management" ^{and} ~~-~~ you can skip right over to page 15:

"a) Construction profits by the developer ..."

I am sorry, that doesn't make sense →

"A number of tax advantages available to the developer are as follows: ~~the following~~"

You will remember the backup material that went before on this score.

a) "Construction profits by the developer (5-10%) which are subject to taxation could be deferred by inclusion in the rental rate if ownership is retained.

b) Capital cost allowances ^{able} ~~available~~ to the developer could be utilized to offset other taxable income by the developer or allow tax deferrals.

c) ^{the} Profits associated with management and maintenance of a building under a lease-purchase arrangement could similarly be deferred for tax purposes.

We expect a small margin of profit to also exist in areas such as financing and rental of commercial space for the developer. The degree to which each of these profit areas would affect the rental rate or the extent he is prepared to share the savings due to tax deferrals on to Hydro are uncertain.

H-134 follows

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AA

H 134 - 1

(Mr. Shibley)

~~on the extent he is prepared to share the savings due to~~
~~tax deferrals onto Hydro are uncertain.~~ It would depend
^{the} on financial circumstances of the builder, his interest
in the ~~whole~~ project and the bargaining capabilities of
Hydro staff. I think that is a ~~significant~~ statement,
members of the committee, because in effect what this
report is saying is ~~that~~ ^{that} these are the advantages to a
builder-developer. Now having regard for them, ^{Posture} we have to
keep them in mind in terms of our negotiating ~~posture~~ when
making a deal with them, because if we can say to the
developer, "You are getting all these advantages," we should
be able to stipulate for a better deal or a lower rate of
rental to Hydro ~~and~~ ^{and} that's, I think, what Mr. Candy is intending
when he says "It depends on the financial circumstances of
the builder, his interest in the project and the bargaining
~~yes~~ capability of Hydro staff."

"It has been evaluated that the ~~capabilities~~ ^{capabilities}
capability of tax deferrals of a 10 per cent construction
profit by the developer represents a net effect of reduction
of 0.9 per cent in financing costs to him."

Then the next topic is "Public Tendering vs. Outside
Development." You'll notice it says, "A public tendering ~~and~~
^(as originally planned) project management approach ~~is being~~ ^{is} considered
as the only means of assuring that the lowest economic develop-
ment is obtained, ~~considering our~~ ^{Considering our} present
position, however, it may not be ~~in the best~~ ^{in the best} of Hydro to
delay the project any longer, but to consider outside develop-
ment." So I think it's ~~clear~~ ^{clear} that in his thinking ~~delays~~ ^{delays} is
a dominant or permanent consideration. Then he talks about
the team approach, the fact ~~that~~ ^{that} developers retain a
collection of experts who ~~co~~ ^{co}-ordinate their efforts, the
fact that the developer who also is required to maintain
the building over ~~the~~ ^{the} 30 years is going to worry himself

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AA

(Mr. Shibley)

about providing a building which will stand up to the test of time ^{and} I am not going to read all that.

I want to skip immediately to page 19, ~~lease~~ ^{lease} - purchase proposals. "During the past year, Integrated Financial Planning has carried out a number of feasibility studies

to investigate the economic advantages of a lease-purchase arrangement. Critical comparisons were made between the cost of internal financing, ~~and management~~ ^{and management}, maintenance ~~financing~~ and that of external ownership, management and maintenance of a ~~new~~ building."

And ~~an~~ ^{an} asterisk ~~to~~ ^{to} refer ~~to~~ ^{to} ~~the~~ ^a note below:

"The terms of reference used in our evaluation for a lease-purchase situation were as outlined in the agreement between Ontario Institute for Studies in Education and Canada Square Corporation for the construction of their building on Bloor Street West."

And you have had really the whole of the evidence, ~~or~~ not the whole of it but a large measure of the evidence in ~~that~~ ^{that} connection.

"In consideration of these conclusions, it was decided to request preliminary proposals from five prospective development firms willing to consider lease-purchase arrangements for our new head office. Each developer was given the specifications and conditions for development as outlined in appendix A, informally, and asked to submit a price breakdown that would be considered suitable for assessment ~~of~~ ^{of} a lease-purchase arrangement." Then he sets out the basis and on page 20, "Selection of Developers."

"The five developers considered as suitable firms that proposals are as follows:" and he were asked to submit sets out the ~~five firms which dealt with him~~ ^{five firms which dealt with him} and he includes

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H 134 - 3

(Mr. Shibley)

Cadillac. Four submitted proposals while ~~Cadillac~~ Cadillac did not. The original submission by ~~Y and R~~ ^a Y and R was based on ^{through} lease-purchase arrangements but on a site made available ~~for~~ redevelopment of Eaton's College Street complex. They were asked to resubmit a proposal utilizing ~~their~~ ^{their} own site. And then on page 21, "Financial." ~~Financial~~ Financing rates varied between 7 and 8-5/8 per cent among the four submissions ^{with} ~~three~~ three of the four proposals ranging between 8-1/8 and 8-5/8 ^{per cent.} The submission ^{by} ~~of~~ Canada Square Corporation suggested an aggregate financing rate between 7 and 7-1/8 per cent per annum but it had a high degree of uncertainty associated with it. Considering the upper limit placed on their annual rental rate ^{conditional} ~~additional~~ on higher financing ~~costs~~ costs, we would suspect their likely cost of financing would be closer to 8 per cent per year. The most notable aspect of these rates is that they are only marginally higher than Hydro's internal rate of long-term borrowing. At time of submission by ^{the} ~~by~~ developers, our latest ^{and} ~~and~~ issue had an effective ~~yield~~ yield of 7.55 per cent.

Now the next page gives a comparative analysis of the lease-purchase proposals and you'll note these headings, "Proposed Capital Cost of Construction", ~~the~~ ^{the} "The Rental Cost"

H 134x 135 - 1 follows

(Chrmn. - Mr. MacBeth)

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R.E.S.

H-135 - 1

(Mr. Shibley)

... post-capital cost of construction, the rental cost, the cost for management; financing costs, ^{There} ~~that~~ is an included cost, ~~apparently~~ ^{for management in the rental cost} ~~financing~~ cost; source of financing. You'll notice in that respect Ellis-Don was Canadian as was Horizon, and Y and R. Canada Square was Swiss or U.S. or a combination. Type of financing indicated; ~~and~~ ^{Then} the comments are of interest. Ellis-Don, just who would be their architects, and so on? Y and R discouraged the development of commercial ~~space~~ ^{space}. You remember the evidence earlier today in that respect; Canada Square, 92.5 cents a square foot per year, due to special features of ~~the~~ ^{the} building. We've covered that and there is really nothing significant as for Horizon. At the bottom -- "Each of the developers has agreed to ~~retain~~ ^{retain} Adamson as consulting or associate architects."

Then you'll notice on page 2 it sets out risks which a developer would assume, which include escalation of construction costs, ~~and uncertainty~~ ^{uncertainty} of actual financing, effect ~~on~~ ^{on} foreign exchange; suitability of design and management ~~and~~ ^{and} maintenance cost escalation. Yes, these are the risks, not necessarily that they are going to be assumed by the developer. And then he deals with construction cost escalation.

The next page is again an evaluation of these risks factors vis-à-vis the four developers, and you'll note that with respect to Ellis-Don, construction cost escalation -- well, as with all four, that item is even. Financing rate escalation -- now, this means what are the hazards of financing costs increasing vis-à-vis that developer? Now, with Ellis-Don the risk was low; with ~~Ellis~~ ^{Ellis} and Rotenberg it was lower; Canada Square higher and Horizon was the lowest, so that, in fact, of the four, Horizon was the developer whose financing rate was subject to the least risk of escalation, and Canada Square the highest. That's the point.

Has that to ~~Therewith~~ ^{Therewith} Mr. Shibley, Mr. Gathercole: ~~There is nothing to be done~~ ^{There is nothing to be done} ~~Mr. Shibley~~ ^{Mr. Shibley}

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R.E.S.

H-135 - 2

(Mr. Gathercole:

~~with~~ ^{coming} Horizon, ~~which was~~ ^{with} in ~~the~~ one of the highest rates of interest, eight and five-eighths per cent?

Mr. Shibley: Thank you, Mr. Gathercole, that's right. Now, so everything is relative here; and on the other side of that ~~the~~ coin, Canada Square had come in with the lowest financing rate, ~~which was~~.

Mr. Gathercole: Yes, and therefore we assumed that, you know, ~~that it would have been likely~~ ^{was unlikely} that it'd get the money for that purpose.

Mr. Shibley: Yes, all right, fair comment. The effect on foreign exchange-- the only one respecting which ~~there was any contingency~~ ^{this} ~~with~~ Canada Square, ~~and designs~~ ^{at philosophy} ~~which ranged from very good to good for all~~ developers; effective management and maintenance, Ellis-Don was "uncertain." Now, stopping there again, Mr. Gathercole, I gather that that was because they had no history of management expertise?

Mr. Gathercole: That's right, yes.

Mr. Shibley: And I think I'm correct, by this time they had abandoned their partnership arrangement with ~~Canada Square~~.

Mr. Gathercole: Sifton.

Mr. Shibley: Sifton, is that right?

Mr. Gathercole: Yes, Sifton Properties, it is.

Mr. Shibley: And, so again, ^{that} ~~I think~~ gather was draining off any comfort as to management expertise on the part of this company?

Mr. Gathercole: Yes.

Mr. Shibley: Then ~~why~~ Y and R are very good, use of own staff, and the same for Canada Square and Horizon.

Then carrying on, you notice on page 23...

(Tape H-135 - 1 follows)

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B.G.

(Mr. Shibley)

→ you notice on page 23, the financing cost variation, "the greatest single contributing cost factor influencing rental rate per year is the capital construction cost of the building. Annual rental rate is established to a large degree by cost of the building and rate of financing that cost. The rate is ~~high~~ significantly sensitive to changes in cost of financing. The direct effect on the annual rate due to such changes in cost of financing from the figures quoted, would be as follows:" and then he gives some figures, which I won't review, but on the next page ~~on page 24~~ you will notice on page 24 how significant it is the change on a cost per square foot of the variable variable in the financing rate. ~~he's~~ - talking about a large area. "One ~~have~~ would ~~has~~ to assume that low financing ~~costs~~ costs, as stated in the proposals by developers are subject to considerable more uncertainty than quotations above our own rate of borrowing. basis of ~~of~~ grading in the risk chart has been based on this assumption."

Then, "Effect of foreign exchange - The degree of risk due to foreign exchange ~~appears~~ to be greatest for developers using a Swiss capital source (Canada Square Corporation). Two of the other developers are proposing domestic financing (Ellis-Don and Horizon) which carries no ~~risk~~ risk due to foreign exchange fluctuation."

Then, on page 25, you will notice in the third paragraph - "A five per cent rise in exchange rate between the Swiss franc and Canadian dollar would result in an increase of 0.07¢ per square foot per year in the ~~per~~ rental rate proposed by Canada Square." And, "Design philosophy" he talks about "By pursuing lease-purchase Hydro is also precluding that the resulting development would meet our standards and portray our corporate image. The degree to which this may present a problem may be assessed on the architect's ~~then~~ developer is proposing to use their experience in the extent to which the developer remains flexible."



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(Mr. Shibley)

Then, on page 26, "The ~~net~~ rental rates suggested by each developer is set out", and you will notice the two columns, "Building Costs" and "Rental Rates". The ~~figures~~ ^{are} ~~are~~ ^{and \$4.46} for Ellis-Don, ~~\$30~~ ^{and \$4.92}; Y and R, ~~\$25~~ ^{and \$4.50}; Canada Square, ~~\$34~~ ^{and \$4.46}; Horizon, ~~\$30~~ ^{and \$4.46}.

On page 27, "Additional Costs," ~~and~~ ^A at the bottom of that page, "incorporating these cost considerations, the effect of net rental rates ~~as~~ ^{to} Hydro would be as follows" for the four developers", and then their figures are set out as indicated.

Then, on page 28, "Qualitative Assessment," bottom of that page, ~~"it is said"~~ "Based on the proposals presented, the experience of each of the ~~developers~~ ^{general} developers, and the feedback received from clients of some of the developers, it would be our considered opinion that Canada Square would best meet the requirements specified. The other developers appear to be handicapped in meeting these objectives as follows:

Ellis-Don/Sifton Properties — inexperience in undertaking a project of this size from a financial and management viewpoint; no prior experience in lease-purchase; subject to higher underwriting and professional fees ~~to~~ ^{due} to type of financing proposed; ~~the~~ ^{and} firm is primarily a general contracting firm ^{and} would require to form a partnership with Sifton to assume responsibility for operation and maintenance...

"Y and R — limited prior experience in lease-purchase; limited experience in projects of this size; does make use of internal management and maintenance staff.

"Horizon — financial cost is high, but very secure; No prior experience in lease-purchase; ~~Would~~ ^{and} make use of a selected general contractor to manage the construction and retain external architects for design." I ~~mist~~ ^{might} say this was considered a negative element. "Internal personnel used in management ^{and} operation of building. ~~Criteria-for-selection~~




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B.G.

(Mr. Shibley)

"Criteria for Selection. The basis on which the four ~~propos~~ proposals have been received and presented does not readily lend itself to selection of any one developer as the most economic. The background material and information available from some developers (Canada Square) is well presented and documented; while others would appear to have prepared their proposals on a strictly hypothetical ~~ba~~ building, without due consideration of our unique requirements. This may be due to misunderstandings as to their terms of reference and objectives." This relates, of course, to evidence that you have already



(Tape H-137 follows)

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M.F.

H - 137 - 1

Chairman: Mr. MacBeth

(Mr. Shibley)

~~this relates, of course, to the evidence that you have~~
~~already~~ heard as to some of them being told that they
should not - or I think it was Ellis-Don that said they
were told not to submit a more specific type proposal as
compared with the material submitted by Canada Square.

Mr. Deans: Is it fair to say that that's quite
an incredible statement in the light of ~~the~~ some of the things
that went before?

Mr. Shibley: It is not for me to comment. ~~It~~ It
is only for me to present to you.

Mr. Deans: ~~Refrained from~~ In reading ahead, I found
that to be an unusual statement to make considering some of
the evidence that we had presented to us earlier about the
discouraging of the developers when proceeding beyond the
preliminary stage.

Mr. Gathercole: They were asked to submit certain
proposals which were to be examined and they were not, as I
judged, asked to go into a great deal of detail or go to a
great deal of expense.

Mr. Deans: You even discouraged from meeting with
other people in the organization because it was felt that it
wasn't worth-while?

Mr. Gathercole: I don't think that was so ~~in the~~ ^{through}
various stages of this; it wasn't true even in the succeeding
weeks and months.

Mr. Chairman: You might hold the comments. Mr.
Shibley would like to finish this exhibit. I know there is
another committee meeting at six o'clock so we will proceed
with Mr. Shibley.

Mr. Shibley: Then to continue on page 3, members
of the committee, I think is a very important -----
(unintelligible)



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5:55-6:00 p.m.
M.F.

H - 137 - 2

Mr. Genest: Excuse me, page 30.

Mr. Shibley: Page 30. Very important content; ~~He~~
goes on:-

"A measure of the quality of the building relative to the rental rate could be used as a simplistic criterion of preference. Using cost per square foot as a measure of quality of the building, we could expect ~~the~~ ^{the} ~~Comparative~~ value of the proposals would be as follows: and you notice what is done is there is proposed capital cost. These were the figures advanced by the builders as their expected costs of building this building, and on that basis what would be the rental. Then there is a pro-rating effected by Mr. Candy, or Mr. Mink, both of whom are responsible for this report, and the equivalent cost at \$34 per square foot is set out, The effect, of course, being that when you take Ellis-Don and convert the building into a \$34 per square foot building, they translate his rental rate to \$538, and similarly with Yolles ^{and} Rotenberg, that is converted to \$504; Canada Square would remain at \$492, and Horizon Developments at \$482. So that whereas on - if you look back on it, well, you can make your own comparison as to the effects of that pro-rating, and that is undoubtedly going to be the subject of further questioning and evidence.

"Considering the marginal economic differences in their proposals, the selection may have to be based more on the qualitative factors associated with the lease-purchase arrangement. We suggest that considerable weight should be given in the selection process to the following:

- (a) the ~~capability~~ ^{ability} of the developer to incorporate long-term needs;
- (b) the prospect that a negotiated partnership could be established that would be of mutual benefit;
- (c) the prospect that a good working relationship can be

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(Mr. Shibley)

maintained between the parties during the life of the contract".

These are very subjective factors, "Observations, based on past studies carried out by Integrated Financial planning ~~we~~ we make the following observations:

(a) the method for obtaining assurance for lowest building costs subject to prior ~~approved~~ ^{approved} specification is public tendering;

(b) While it can be almost assured that internal debt financing ~~is~~ would result in a lower rate, ~~this~~ ^{this} advantage may be offset by a lease-purchase arrangement through shared tax deferrals."

Now that is an important statement, ~~that~~ ^{would} I suggest.

And then he goes on with other considerations.

Tape H - 138 follows

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6.00 to 6.05
M.T.

H-138-1

(Mr. Shibley)

~~a statement I suggest, and then he goes on with other considerations.~~

On page 33 he lists additional considerations as well, including ^{ED} among which is number 2; ^{HERE} should be clear ^{ER} definitions on the basis whereby rental rates would fluctuate due to changes in foreign exchange." And ^{ed} appendix to that report ^{is} the support material that he relied upon in the conclusions indicated.

Now, Mr. Chairman, that's as far as I wish to go respecting the documentary evidence. I ^{NOTICE} ~~know~~ it's 6 o'clock and perhaps it's appropriate to suggest to the committee that they may wish to study that document and reserve their questioning for tomorrow. ^{Perhaps} you might indicate the time of sitting ~~for~~ tomorrow, as you have indicated it to me.

Mr. Chairman: Now I understand that the House is not meeting tomorrow and that we are free to meet here, as we discussed earlier, at 2 o'clock and proceed to 5 o'clock, I think was what we agreed to, and then - now I am getting confused, what else did we decide? ^D Did we talk about sitting in the morning?

Mr. Shibley: Sitting in the morning.

Mr. Chairman: Yes, sitting in the morning, from 10 until 12 o'clock, and then 2 o'clock until 6 o'clock or 5 o'clock. I forget what we agreed to. Does anybody remember?

Mr. Walker: Five.

Mr. Renwick: Five.

Mr. Chairman: 5 o'clock was it? 10 until 12 o'clock and 2 until 5 o'clock. So we are adjourned until tomorrow ~~for~~ morning at 10 o'clock.

~~The~~ The committee adjourned at 6.01 o'clock, p.m.

LIST OF EXHIBITS

44. Letter - August 8, 1972
J.D. Fleck to G.E. Gathercole
45. Letter - October 5, 1970
B. Ghert (Fairview Corp.) to K. Candy
46. Letter - October 16, 1970
K. Candy to B. Ghert
47. Memo - September 9, 1971
H.J. Sissons to J.L. Witbeck and
K.H. Candy re Cadillac Commercial Properties
48. Memo - December 10, 1971
K.H. Candy to File re
Administration Building
49. Letter - September 16, 1971
Walter Zwig (Horizon Development and Management
Ltd.) to H.J. Sissons re New Premises
50. Memo - September 22, 1971
H.J. Sissons to J.L. Witeck and K.H. Candy
re Walter Zwig
51. Memo - December 21, 1971
K.H. Candy to File
re Administration Building
52. Proposal - January 17, 1972
Walter Zwig (Horizon) to K.H. Candy
53. Memo - December 14, 1971
K.H. Candy to File
re Administration Building
- 54-A Letter - January 20, 1972
G.V. Tatham (Y and R Properties) to
K.H. Candy
- 54-B Proposal - January 20, 1972
Y and R Properties
55. Letter - February 7, 1972
G.V. Tatham (Y and R) to K.H. Candy
56. Letter - February 8, 1972
K. Rotenberg (Y and R) to K.H. Candy
57. Proposal - February 2, 1972
D.J. Smith (Ellis-Dow) to K. H. Candy
58. Memo - February 2, 1972
K.H. Candy to File re Ellis-Dow Proposal.
59. Letter - February 17, 1972
D.J. Smith to D.J. Gordon re Proposal
of Ellis-Dow
60. Memo - February 22, 1972
H.J. Sissons to Vernon Bayley (Ellis-Dow)

LIST OF EXHIBITS
(cont'd)

61. Proposal - January 24, 1972
Canada Square Corp. to K.H. Candy
 62. Memo - February 1, 1972
K.H. Candy to G.E. Gathercole re Proposals
 63. Memo - March 23, 1972
M. Nastich (Asst.Gen.Mgr.-Finance,Hydro) to
File re Construction of New Office Building
 64. Memo - March 27, 1972
F.J. Mink (Financial Analyst, Hydro) to
K.H. Candy re Head Office Development
 65. Memo - March 30, 1972
K.H. Candy to File re Canada Square Proposal
 66. Memo - April 6, 1972
K.H. Candy to F.J. Mink re Administration
Building
 67. Draft Proposal - April 10, 1972,
by K.H. Candy, F.J. Mink for Ontario Hydro
Head Office Development
-

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, May 30, 1973.

Morning session

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Ontario Hydro counsel:	Pierre Genest
	James McCallum
Canada Square Counsel:	Douglas Laidlaw
Chairman, Ontario Hydro:	George E. Gathercole

May 29, 1973
10.10-10.15 a.m.
M.F.

Chairman: Mr. MacBeth

H - 139 - 1

The committee met at 10.10 o'clock in the members' board room.

Mr. Chairman: Ladies and gentlemen, we have a quorum. I would ask Mr. Gathercole to come forward and again remind him that he is already sworn, ~~and~~ ask Mr. Shibley to proceed.

My last exhibit was 67 and I think that is what we were talking about when we adjourned.

Mr. Shibley: Mr. Gathercole, dealing with the last exhibit, which I asked to be put in front of you, on page 30 of that exhibit, you will notice that toward the bottom of that page is a schedule which prorates the rental on the basis of a \$34 per square foot cost of constructing the building. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And in that respect I would like your comments as to the validity of that mode of treatment of the submissions by each of the four developers.

Mr. Gathercole: Mr. Chairman, and gentlemen, I think the first thing that has to be recognized is whether you escalate it up to \$34 or whether you de-escalate it down to \$22 or \$26, the results come out the same.

Our chief architect examined very carefully into a number of contemporary building costs and came up with the conclusion, which we thought was fully justified, that a building of good quality which would be completed, not in '72 but in 1975, would cost \$34 a square foot, or thereabouts. Now I believe Mr. Candy took the estimated cost of the old building, that is to say the building which was predicated upon the former plans, and escalated those forward, ~~and~~ I know there were some estimates of the cost of that building that would ~~have~~ have been erected from those plans, the estimates being \$28,000,000, which were subsequently in the succeeding year,

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M.F.

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(Mr. Gathercole)

scaled up to \$33,000,000; primarily, though not exclusively, because of the escalation of cost.

From my own point of view - and I didn't go into making an analysis of these detailed figures - I had heard figures, which were quoted to me, of the cost of some buildings which were being erected by other authorities, or other enterprises. For instance, my understanding was that the Mowat and Hearst blocks were erected at a cost of something in the order of \$40 per square foot, and I thought if this is so, and I think it did ultimately emerge in the area of \$40 per square foot, then a building in the order of \$34 a square foot for Ontario Hydro, if it could achieve a quality of building, would be justified.

Similarly, I had had figures quoted to me that the Commerce Court was running over \$40 a square foot. Now I recognize that is a different type of structure and that comparisons of this kind can be very invidious and not too reliable, but I did have figures of this kind which had been advanced to me. I have since that time verified that the figure of the Commerce Court - and this was given to me in confidence - will run well over \$40 a square foot.

Mr. Renwick: That's a luxury building though, Mr. Chairman.

~~Mr. Gathercole: But I am just -----~~

Tape H - 140 follows

H 140-1

May 30/73
10:15-10:20 am
PLG

(Mr. Renwick)

~~That is a luxury building though Mr. Chairman.~~

Mr. Gathercole: Well I am just suggesting that these were some of the figures that were suggested to me and so I hadn't any reason myself to challenge the \$34 a square foot. The other point in it ^{which} I thought that we had to get protection was this; that if the value of the building emerged at less than \$34 a square foot, we would enjoy the benefits of three-quarters of the saving. Now this seemed to me to be an advantage and therefore, we had some protection on that side of it; so Mr. Chairman and gentleman, this is the approach that we took. As I say, these calculations were worked out very carefully by people in our organization. We have had experience in that *in the* past. Someone has come in and said that they would erect something at a very low price and we found that in the end they couldn't do the back and with the adjustments it subsequently required, we ~~was~~ would have been better off to have established what the rules would be and the terms would be on a moralistic ^{base} ~~base~~ base at the beginning.

Mr. Shibley: In the case of these particular developers, Horizon Development to take an example, submitted a list of representative buildings did it not?

Mr. Gathercole: Yes it did.

Mr. Shibley: And among them was the Travelers building on University avenue. Now would you agree with me that that is a high-quality building?

Mr. Gathercole: Yes I would myself, think that it was a very satisfactory building. Now, whether that type of building would look well opposite Queen's Park is another matter, and I think there was some consideration given to that matter.

Mr. Shibley: In submitting its proposal, however, that was one of the buildings that Horizon pointed to as a measure of the quality of buildings that it intended for Hydro, did it not?

Mr. Gathercole: Yes.

Mr. Shibley: And based upon that quality, it suggested that its cost of constructing this building for you would be \$30 per

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(Mr. Shibley)

square foot at that time.

Mr. Gathercole: Yes. With escalation.

Mr. Shibley: Now then, with respect to the risk inherent in the building costing more than \$30 per square foot, who ~~was~~ bore the burden of that risk?

Mr. Gathercole: Well, it would depend upon the terms that were worked out, I presume, but in terms of , if it was a guaranteed price of that sort, it would be I presume at \$30; but on the other hand, these were terms that were submitted which might have been subject to escalation and if someone comes in and makes a bid which ~~has~~ become too unrealistic, then our experience is that adjustments are required later.

Mr. Shibley: Well Mr. Gathercole, was it not a basis of tendering that the risk of increased costs of construction was a ~~real~~ risk that the developer had to bear?

Mr. Gathercole: Yes, that is true.

Mr. Shibley: ~~So~~ that if in order to build a building of the quality of say the Travelers building, Horizon ran into ^{de} a ~~fact~~ cost of \$34 per square foot. That additional cost would be for its account and not for the account of Hydro either directly through or indirectly ~~by~~ increased rentals

Mr. Gathercole: Yes ~~and~~ the terms ^{and} worked out at \$30-a square foot, that would be so, but there might be some things that they wouldn't be able to carry out underneath that, or within the scope of that \$30 a square foot

Mr. Shibley: Are you telling me that it was a matter of concern to Hydro that if you entered upon an arrangement at the lower cost per square foot, that the builder would not build the standard required?

Mr. Gathercole: That was the conception in mind yes.

Mr. Shibley: They cut corners.

Mr. Gathercole: Yes that is right.

Mr. Shibley: I didn't know that. On the other hand it is not a case where at the ~~out~~ Hydro viewed -- well I shouldn't put it in those terms. Let me start again. Did you view the

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Travelers building as a building of a quality equating ~~the~~ with
the quality you sought for the Hydro head office?

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(Mr. Gathercole):

I think in a general way, if you ask ^{me} my personal opinion

Mr. Shibley: Yes.

Mr. Gathercole: In a general way, without knowing all the mechanics ^{about} it, ~~what~~ I would say that the quality of it, although not necessarily the design of it, was one that would be appropriate for Hydro. But I think in the assessment of the building that our technical people reached a different conclusion.

Mr. Shibley: I am not talking about special features now, which I believe an earlier exhibit broke out at a cost of 96 cents per square foot, did it not?

Mr. Gathercole: Yes, I think that is so.

Mr. Shibley: I am now talking just general quality of the building. And similarly with respect to the Yolles and Rotenberg submission, they pointed ^{out} the IBM Comput^{ing} Centre as the standard, so to speak, for quality that they intended for your head office, did they not?

Mr. Gathercole: Yes, they suggested that they had erected that building, that they thought it was of very good quality, and it might be a quality that ~~might~~ ^{would} be suitable for the site at Hydro, ~~and the Allstate Building was not suitable for the site at Hydro.~~

Mr. Shibley: And Mr. Candy attended and examined the IBM building?

Mr. Gathercole: Yes, I understand he did.

Mr. Shibley: And what conclusion did your people formulate as to whether that standard of quality, I am not talking about design now or special features, in terms of standard of quality, what conclusion did your people reach as to whether that standard would be acceptable for Hydro's head office building?

Mr. Gathercole: Well, ~~in~~ just speaking personally, I would say that the quality, although not necessarily the design, I know the IBM building and the Allstate Building yes, but it appears to me to be a very satisfactory building.

Mr. Shibley: Was it of a quality - I am not talking design - was it of a quality that met the measure that you

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(Mr. Gathercole)

something that would be worn out, otherwise why go through the exercise of this?

Mr. Shibley: You didn't want a building that was only worth \$1?

if
Mr. Gathercole: We think that/that structure, ~~as~~ as this one here, ~~even~~ dates back I suppose for nearly 100 years, and I would think that the Hydro building would be there a long ~~time~~ time, perhaps over 100 years.

Mr. Shibley: Well what we are really talking about, now, Mr. Gathercole, is what financial people call the residual value in the building at the end of the lease.

Mr. Gathercole: The end of the period.

Mr. Shibley: Is that correct?

Mr. Gathercole: Yes.

~~Mr. Shibley: And you were understood.~~

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(Mr. Gathercole)

~~we didn't want to~~

Mr. Shibley: And you were, undoubtedly, I am sure, concerned that that building had a true residual value after 30 years and would not be obsolete or worn to the point where it required ~~demolition~~ demolition.

Mr. Gathercole: That was a very important consideration to us.

Mr. Shibley: All right.

Mr. Gathercole: and that it had good appearance ~~and~~ a prominent site ~~at~~ that ~~kind~~.

Mr. Shibley: Now, you also introduced another element, which was the cost of maintenance, ~~and~~ would you please elaborate to this committee why you introduced that as an element entering upon the quality of the building?

Mr. Gathercole: It is one of the components in ~~the~~ ensuring ^{an} ~~that~~ that you have ~~an~~ enduring and attractive building through time and ~~it is made up of ensuring~~ that you have ~~a~~ building which is going to be in good taste and attractive in its appearance down through the years over a long period of time. Now, part of the maintenance is ~~the housekeeping~~ what I call the housekeeping. Other people call it the janitorial service. That is an important part of it. ^{have} We had experience in this. Mr. Witbeck can tell a great deal ~~about~~ about this, and so can Mr. Sissons. But we have had experience, varied experiences, in this area.

Mr. Shibley: Isn't it a fact, Mr. Gathercole, that the cost of maintaining a building is, in ~~some~~ some measure, in direct proportion to the quality of the building?

Mr. Gathercole: Oh, there is no question about that.

Mr. Shibley: In the arrangement that you were to have with any one of these developers, ~~the~~ maintenance was to be the responsibility of the developer for 30 years, is that correct?

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Mr. Gathercole: Yes, that's right.

Mr. Shibley: And each of them costed their maintenance as part of their proposal to you?

Mr. Gathercole: That is true.

Mr. Shibley: Now then, in that connection, would it therefore be a consideration in the thinking of any of these developers that they should build a building of such a quality as to keep the cost of maintenance down?

Mr. Gathercole: That has been our objective right through our entire organization, whether it ~~has~~^{is} related to buildings, or whether it's related to generating ~~equipment~~^{equipment}, ~~to times~~ and all the rest of it. If you don't buy good equipment, your maintenance costs are very, very high. And since these are the type of costs that are escalating the most because of inflation, this is where your cost increases come. ~~If you buy something~~ It's like buying an automobile; if you buy an enduring automobile that is trouble-free over time, then your expenditures are going to be less over that long period of time, particularly out in the years ahead, ~~rather than~~.

Mr. Shibley: Mr. Gathercole, I was directing your ~~attention~~^{rather} to the approach of the developers towards the quality of the building. What I really was asking you is this, would not the developer, whoever it was to be, be anxious to construct a building of high quality, knowing ~~that~~ that he had responsibility for maintaining that building for 30 years, and that his cost of maintaining that building would go up or down ~~accordingly~~^{as the} as the quality of the building went down or up?

Mr. Gathercole: Mr. Shibley, on all these matters there is a compromise, as I visualize it; and I don't happen to be an expert in carrying out developers' plans for buildings. But in everything you arrive at some sort of a compromise ~~as to~~^{as to} how much you are going to lay out, how much capital you are going to invest in the building initially, and what you are going to require

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later on to provide and spend for maintenance. ~~He~~ Some people erect structures which cost \$19 ~~I~~ I mean, we are no doubt building structures which cost \$19 a square foot, but ~~they~~ they are a special kind of a structure. ~~On~~ On the other hand, you may want to build something that is much more durable, and that is going to cost you more.

Mr. Shibley: Just returning to the schedule on the ~~last exhibit at page 30.....~~

Tape H-143 follows



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(Mr. Shibley)

~~There is a schedule on Exhibit - the~~ last exhibit at Page 30. I note also that Ellis-Don put in a figure predicated on \$30 per square foot whereas the proposals in the first instance indicated that they were expecting to build this building for \$26 or \$28 per square foot. Is that not correct?

Mr. Gathercole: They had suggested those figures, yes.

Mr. Shibley: Yes, and in fact some of

Mr. Gathercole: I think they said \$26, \$29 or thereabouts, that range.

Mr. Shibley: As a matter of fact

Mr. Gathercole: On the other hand, I may say, Mr. Shibley, that the meeting that I had with Mr. Don Smith of Ellis-Don, which as I recall was on July 13th, of 1972, he had mentioned to me ~~that~~ and this is my recollection ~~that~~ of the building that he was erecting for, I guess it was, National Life or Continental Life - National Life at that time, and which he declared to be and I acknowledge this, an expensive building, but my recollection is he said it was over \$30 a square foot.

Mr. Shibley: Well, I take you back to Exhibit 57.

Perhaps the clerk could give you that exhibit and you will note in that exhibit it says - I'm sorry, he advanced the figures of \$28 and \$30 per square ~~foot~~ foot and then he says in the second paragraph "there could be some doubt in your mind that you could be told you were getting a \$28 per square foot building and in reality you might be getting a building that only costs \$26 per square foot" and he goes on and talks about sharing any saving ~~and~~ ⁱⁿ cost of construction. What occurs to me when I read that letter is that in Mr. Smith's mind, he seems to be thinking in terms of a cost of \$28 or even \$30 per square foot as on the high side, for

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constructing the building, Would you agree with that?

That that is at least his ~~own~~ thinking?

Mr. Gathercole: Yes The range of costs that he has presented is very favourable to his proposal but whether they would have worked out that way is another matter.

Mr. Shibley: All right. Mr. Gathercole, in any event, this method of prorating these figures was employed and incorporated in the ultimate submission that went to the members of the commission, ~~which~~ later in June when they were deliberating upon it. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And that was done with your sanction?

Mr. Gathercole: Yes it was.

Mr. Shibley: So that when we come to deal with the submission that was actually tabled with the commission, the same approach respecting prorating was taken on that occasion and the commission was acting on that type ^{of} information?

Mr. Gathercole: Yes, on the understanding that the cost for a quality building ~~was~~

Mr. Shibley: Yes?

Mr. Gathercole: to be started in 1972 and completed in 1975, during a period of inflation, rapid inflation, ~~within all likelihood~~ would in all ^{likelihood} require \$34 a square foot

Mr. Shibley: Yes. Now, then the next document I would like to produce to you is a document dated April 11th, 1972, on the letterhead of Ellis-Don to Mr. Candy.

Mr. Chairman: That will be Exhibit 68.

Mr. Shibley: And the gist of this letter is

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(Mr. Shibley).

And the gist of this letter is found in the following phrases:

"I had a meeting with Wood Gundy this morning and it would appear that the interest ^{rates} have gone up five-eighths of one per cent since our meeting in January."

And then the next sentence: "Ellis-Don are going to get into the development business and we would be prepared to develop and manage this property."

And then finally in the last paragraph: "I have not calculated the cost per square foot on these new interest rates, but I will put them into a letter to you this afternoon and forward it to you."

Now, Mr. Gathercole, dealing with that letter, I don't know whether your copy of it has a handwritten notation at the very end: "19 cents per square foot". Do you see that? ~~Is it~~ maybe on the second ~~copy~~.

Mr. Gathercole: I have it here. Yes, it is on the second copy, "19 cents per square foot".

Mr. Shibley: I think if we just make the second ~~copies~~ the only exhibit, Exhibit 68, with that notation on it, to avoid duplicating the material. Do I take it that that was a calculation made of the increased rental that Ellis-Don would stipulate for, by reason of the increased ~~xx~~ interest rate?

Mr. Gathercole: This is my understanding, but I can't verify the calculation.

Mr. Shibley: So that as at April, 1972, which would be a date preceding your Commission meetings to decide upon these questions, there was this variation in the Ellis-Don proposal, ~~emina~~ ^{is} emanating from the change of interest rate?

Mr. Gathercole: Yes.

Mr. Shibley: Did you receive any similar representations respecting change of interest rate from any one of the other three developers?

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Mr. Gathercole: I don't recall having received anything.

Mr. Shibley: I notice also from the letter that it seems to confirm that Ellis-Don were only then getting into the development business; and you've made comment on that in the past.

The next document I want to produce to you is a document dated April 13, 1972, being a memo from Mink to Nastich.

Mr. Chairman: Exhibit 69.

Mr. Shibley: This document reads:

"Attached please find the additional information requested during the meeting of April 11, 1972."

Now, Mr. Gathercole, do you know what meeting is referenced in that paragraph? I might tell you, I have no minute or any other record of such a meeting. And if you do not know of it, I would ask, through you, to have your people

Mr. Genest: Mr. Shibley, I have information on that. I'm told there was a meeting of a small financial group. There was not a Commission meeting.

Mr. Shibley: All right. Thank you. Then it goes on:

"I have also added a brief breakdown of what the apparent variance is between costs and respective rental rates for each developer. It is likely that the composite financing cost to Canada Square will be nearer to 8% than the originally quoted rate of 7%. They have indicated that there would be no adjustment to their quoted rental rate (\$4.92) if their financing cost would increase."

Now, was that a position that was preserved throughout the negotiations leading to the agreement with ~~Canada~~ Canada Square?

Mr. Gathercole: Yes, that is so.

Mr. Shibley: So that, to put it in other terms, the party to the agreement as between Hydro and Canada Square, which is at risk respecting increase in interest rates, is Canada Square not Hydro?

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Mr. Shibley: Your rate of rental is to be no more
1.92 per square foot? ~~xxxxxxxxxxxxxxxxxxxxxxxx~~

Mr. Shibley: I understand, on the other hand, that with the remote prospect that interest rates were to drop, materially, provision was made for Hydro to share in the benefit of such a drop in interest rate.

~~Mr. Gathercole: That is true. If the interest . . .~~

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C.B.

???

~~XXXXXXXXXXXXXXXXXXXX~~ Mr. Shibley~~would share in the benefit of such a cost in interest rates.~~

Mr. Gathercole: That is true, ^Ithe interest at which they borrowed the money was less than eight per cent or eight and a third per cent in ~~fact~~ effect.

Mr. Shibley: Yes.

Mr. Gathercole: Then we would have the benefit translated into a lower rental payment.

Mr. Shibley: Yes, we will get into the particulars of that with your financial people. But I thought the committee should have that foreknowledge of that arrangement at this time. ~~As~~ as an appendix to that exhibit of April 13, there is a document styled "Public Tendering vs Single Developer". Do you see that?

Mr. Gathercole: Yes I do.

Mr. Shibley: Would you explain to the committee what that is intended to outline?

Mr. Gathercole: Well, it does set out some of the differentials ~~involved~~ involved between going the public tendering route or ^{the} single developer route. ~~Public tendering~~ For instance, ^{if had called} we ~~asked~~ for public tenders, ^{this would have resulted in} ~~and we told them an~~ eight month delay ^{would have} is suggested here. My ^{judgement} ~~is~~ is that it probably ~~had been more~~ ^{would have} ~~but~~ knowing how much longer sometimes these developments take compared with ~~what~~ estimates ~~are~~ made earlier, ~~and~~ so this is one of the advantages of proceeding under the course that we did. The next item says "Assumed building cost by the developer is \$40 million or ^{of} \$33.34 per square foot". Now this dates back ~~to~~ ^{to} April, 1972.

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Mr. Shibley: In part, that increased cost resulted from geographic scatter in the last year of the period of construction, which is when the period of delay would have its effect. Correct?

Mr. Gathercole: Yes, that's true.


Mr. Shibley: And the building cost escalation would add \$1.5 million. Is that correct?

Mr. Gathercole: That's right.

Mr. Shibley: Then the third ^{factor} is higher space costs by \$1 per square foot for the eight-month month period, all ^a as outlined. And ~~this~~ this amount, distributed over the ~~period~~ of the lease which was in contemplation, would represent ~~16.4~~ 16.4 cents per square foot per year. Is that correct?

Mr. Gathercole: That is very true.

Mr. Shibley: So that is the analysis. I want the committee to understand what were the considerations impinging upon the minds of the people within Hydro respecting a decision to go the lease-purchase route ~~as opposed to~~ doing a complete new set of



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~~to go the least purchased route~~ as opposed to doing a complete new set of plans and building your own building. ~~and~~ From this document I gather this was one circumstance which was weighing upon your people. Is that correct?

Mr. Gathercole: That is very true.

Mr. Shibley: Yes, and ~~well~~ then it goes ~~x~~ on and in the latter part of the memo ~~just before I leave that~~. I gather also of course it would save not only time but a very substantial effort on the part of Hydro staff, particularly the architectural division, if you went the developer route.

Mr. Gathercole: That is true and Mr. Shibley, Mr. Chairman and gentlemen, if you have an open tendering system on this and you want a very complex package of housing over a long period of time, you get proposals ~~and~~ bids from a wide variety of ~~xxxxx~~ contractors or developers. You can ~~xxx~~ define what the group shall be and we do this. On the other hand, even within what you might call a pre-qualified group of bidders, there may be some who will come in in order to obtain the contract ~~(who)~~ will bid low and then you find that maybe on assessment that isn't the exact package that you wish to have.

Mr. Shibley: Yes.

Mr. Gathercole: This is ~~the~~ really difficult question. There is no guarantee, ~~no guarantee~~ that ~~we~~ even if you select contractors and you get bids from them that you are going to ultimately arrive at one who bid the lowest price.

Mr. Shibley: Yes; I notice that on that same page, the last paragraph, "It has been indicated to us by one of the developers that the current profit margin of general contractors is three per cent of the contract price. Based on this, we could anticipate a maximum variance of \$1 million between tendered submissions ~~andxxx~~ on a public tendering approach." Now, I gather what he is saying is that on a building of this dimension, the profit margin to which a builder would be working would be \$1 million and that you could not hope for fluctuation in tender

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price of more than \$1 million.

Mr. Gathercole: That is a real possibility.

Mr. Shibley: Do you know who was the one developer that is mentioned in this paragraph?

Mr. Gathercole: I haven't any notion.

Mr. Shibley: All right. Now then on the final page there is a cost breakdown of the lease-purchase proposals submitted by the four developers. I am going to leave that for the moment. It is just part of a document and that returns in later documentation as well.

Mr. Deans: May I ask a question? ~~Yes~~

I want to be clear I understand. When you were discussing maintenance just a moment ago and the question was asked whether in a ~~any~~ higher quality building the cost of maintenance would be lower, simply because it is easier to maintain, ~~that~~ it doesn't seem to be the case under column three in this cost breakdown, ~~on the~~ lease-purchase proposals, where in what appears to be ~~at~~ least the higher cost building, whether it is the higher quality building, the cost of maintenance is higher.

Mr. Gathercole: ~~That is correct, and I agree~~

contractor submits \$1.23 per square foot for maintenance that he is going to be able to do it for that.

Mr. Deans: Well, ~~doesn't~~ it doesn't mean though that the

man who submits \$1.45 can do it for that either.

Mr. Gathercole: Yes, but I would say that he had more room in order to do an efficient job on it.

Mr. Deans: It just doesn't seem to follow through, you know what I mean.

Mr. Gathercole: Well, it doesn't follow through on those statistics and I agree with you on that, but I feel myself when Mr. Witbeck who is a specialist in this area ^{has} knows some of the problems that are involved in maintaining buildings and ~~the~~ the housekeeping and expenses that are related to ~~and~~ he has an ^{then} opportunity of giving the evidence, as I hope he will, ~~that~~ I

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think we can clarify them with you. These are matters that are brought to my attention and I hear grievances about them, *and* complaints of a wide variety, but I think he is the one who can best *handle*

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AA

(Mr. Gathercole)

~~of a wide variety but I think he is the one who can best~~
outline and explain some of the difficulties in ~~this~~ ^{the} maintenance but on the statistics, we'll just say it is ~~quite~~ quite correct.

Mr. Deans: I'll ask him, don't worry.

Mr. Shibley: And in that connection, Mr. Gathercole,

I agree that Mr Witbeck is better suited to answer the question, but perhaps ^{the} a better comparison is a comparison between \$1.45 submitted by Canada Square and \$1.35 ~~submitted~~ by Yolles and Rotenberg, the latter having been acknowledged by you to be highly qualified in the ~~maintenance of~~ ^{Is that correct?} maintenance of buildings of this dimension, and that ten cents differential between those two developers would be a meaningful difference?

Mr. Gathercole: It is obviously something you can't neglect or ignore. You have got to take it into consideration in the overall package.

Mr. Shibley: Yes, well, we will take that up with your financial ^(people) ~~people~~ and Mr. Witbeck later on. Ellis-Don's figure of \$1.23 would have to be assessed against a background of no ~~any~~ experience in the management of ~~the~~ buildings. ^{Is that correct?}

Mr. Gathercole: That's ^{true} ~~right~~, yes.

Mr. Deans: Mr. Chairman, I ~~don't~~ didn't want to leave the impression that I was comparing it with \$1.23. I was simply ~~saying~~ saying that the higher quality buildings, at least the higher cost buildings, seems to have the higher maintenance, which ran counter to what was suggested earlier.

Mr. Gathercole: Mr. Deans, that would ~~lead~~ ^{lead} to even lower wages than those that were ^{giving} ~~giving~~ you ~~concerning~~ ^{concerning} elsewhere.

Mr. Deans: Oh, we are going to get to that later.

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(Mr. Deans)

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AA

See, I agreed last week to save that for later. I didn't want ^{you to} raise it.

Mr. Gathercole: Mr. Chairman, a number of questions

have arisen about Yolles and Rotenberg and the quality of the other - ^(and) ~~the competence~~ competence of other contractors. Let me just explain. I am not really conversant ^{or} I am not knowledgeable in the business of who ~~had~~ ^{are} the best ~~resul~~ ^{develop} ~~ments~~ ^{ers}, because I have had people who have made comments or ~~observations~~ observations to me about developers and they have indicated ^(that) Ellis-Don, for instance, is a very good contractor - I don't think there is any question about that. Yolles and Rotenberg are a very good development organization and have done some very fine buildings. ~~The~~ Olympia and York, although they provided ~~the~~ accommodation which we occupied at one time ^{and} which disenchanted ^{us} nevertheless ~~they~~ have done some good buildings, including the Toronto Star ^{building}, but I also find from people who I think have good judgement in this area ~~that~~ ^{that} Canada Square has stood among the two or three best developers in the province. Now, this is one of the bases on which we made a decision. We have been talking about the quality of these others and ^{it always seemed} ~~they seem to be~~, you know, that maybe Canada Square was right down at the bottom of the heap, and they are just a small organization, or that they can't get the work done, but that wasn't our ~~assessment~~ assessment of it, no.

Mr. Shibley/Shibley: Well, Mr. Gathercole, just to make the record complete, then, in that respect, do I take from your last statement that what Hydro had here were four developers, each of whom had ~~an~~ expertise, each of whom had a good reputation in the area of developing and building buildings, three of whom had good reputations and

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a history of experience in the maintenance of buildings. So that with respect to their general qualifications, three out of the four, ~~was~~ in any event, were more or less even. Is that correct?

Mr. Gathercole: In the development field and one was seeking to get into the development field.

Mr. Shibley: Yes. So that whatever might be the case, otherwise, you were then left to decide on a selection which was based upon the financial arrangement and the economic terms of the lease-purchase agreement proposed by those developers. Is that correct?

~~Mr. Gathercole: I would say that~~

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V.H.

(CHAIRMAN: MACBETH)

(Mr. Shibley)

~~pushed by those developers. Is that correct?~~

Mr. Gathercole: I would say that ~~the~~ ^{one} important considerations ~~was~~ ^{was} the relationship in the OISE building that the people ~~had~~ ^{had} had with the company ~~and~~ ^{and} the general design and style of that type of building. I think those were important considerations. It wasn't ~~an~~ exclusively economic and financial, although I do agree with you that Yolles and Rotenberg and the others had done some very good work.

Mr. Shibley: That's the point I want to get down to, though, Mr. Gathercole. ~~I'll leave~~ ^{I'll leave} Ellis-Don aside for the moment, because I think your people's explanation is that they did not have management experience and had dropped their partner who had management experience. But taking the other three, ~~Yolles, Rotenberg, and Horizon~~ and I am including Canada Square as having all the qualities you've mentioned, and I am talking Yolles and Rotenberg and Horizon as having equivalent qualifications, ~~what~~ ^{what} is really left ~~xxx~~ necessarily are the financial and economic terms.

Mr. Gathercole: Mr. Shibley, I don't think that is so exclusively ~~the~~ ^{to be} ~~the~~ for instance, one advantage seemed to us ~~that~~ ^{that} Canada Square took on ~~one~~ ~~project at a time the way~~ ^{by and large} one project at a time, this seemed to be advantageous to our technical people who advanced this to us and I think some consideration and weight had to be attached to it. There are other aspects of it, the accommodation that they had provided, ~~and the~~ flexibility in the OISE structure, ~~and~~ ^{and} the willingness to make adjustments in the course of the occupancy. These were things that I think had an effect on the people who were considering this. ~~The~~ ^{The} ability to get the structure under way and completed. The finances were certainly an important consideration but they weren't the exclusive consideration;

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V H

(Mr. Gathercole)

that was the point I was making. How do you rate quality? They are all good developers or contractors. How do you rate them?

MR. Shibley: That's what I am wondering about,

Mr. Gathercole, ~~the same way that~~

Mr. Gathercole: It has to do with judgement.

Mr. Shibley: In the same way that Canada Square created a good image of itself, and probably a ^{ted} ~~warranted~~ image of itself, by the mode of dealing with the GISE building. Horizon appears to have done the same with respect to buildings constructed and managed by it, did it not?

Mr. Gathercole: As far as I am aware, but I haven't made any detailed studies of that. I think on these assessments, we ~~ought to hear what Mr. Candy's judgement was with respect to the type of designs that they were advising, the type of quality that they were proposing and his assessment of the situation in respect to these different conditions.~~ ^{ought} Candy's judgement was with respect to the type of designs that they were advising, the type of quality that they were proposing and his assessment of the situation in respect to these different conditions.

Mr. Chairman: Mr. Rowlick.

Mr. Rowlick: Mr. Chairman, with respect to the ability to get on with building a building, I would take it so far ^{that} ~~as~~ that was a factor that would bring Ellis-Den back into consideration. ~~the question~~ ^{the question} they were good contractors.

Mr. Gathercole: Yes, I ~~agree~~ ^{agree}.

Mr. Deans: I also have a good question.

Mr. McChesman: Mr. Deans.

Mr. Deans: When you ~~say~~ ^{say} it becomes a matter of judgement as to who is most capable of proceeding, don't you think that in order to make that judgement, it requires that everyone have exactly the same opportunity and exactly the same ground rules to operate from before you can judge the conclusions?

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Mr. Gathercole: I think as far as I have been advised, and I think Mr. Candy^{very} can explain this clearly, all the developments and an opportunity of discussing the proposals^{and} hydraulic objectives in an even way.

XXXXXX

Mr. Shibley: Mr. Dean, I am going to be dealing with that ~~with~~ with Mr. Candy in some depth.

Mr. Deans: Could I ask one question to you then, Mr. Shibley? On exhibit 67, ~~was~~^{that} was the exhibit upon which the Commission based its final conclusion?

Mr. Shibley: No, it was not.

Mr. Deans: ~~the commission did~~ not receive it?

Mr. Shibley: It was not and I purposely injected in one of my questions reference to the ~~ultimate document~~ in the hope ~~that you might refer your own~~

H-149 follows



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11 00 - 11.05 a.m.
R.E.S.

Q-342

1871

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$$f(x) = \begin{cases} 1 & \text{if } x \in \mathbb{Q} \\ 0 & \text{if } x \notin \mathbb{Q} \end{cases}$$

Mr. Gardner: .

Mr. Shubley:

Mr. Gathereole:

11.05 a.m.

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Mr. Hillebrand: Oh, I see. I'll return to the document which is now exhibit 70. You notice that references to the meeting on June 5 with Sissons, Durand, Gordon and Mink attending with Mr. Gandy, at which time it was decided that a recommendation should be prepared for commission approval, justifying the requirements for a new head office building and recommending an appropriate developer to carry out this project, including the design, construction, financing and maintenance of the building, the latter I gather being a reference to the fact that the builder, the developer, would be required to do those things.

"In my subsequent discussion with the Chairman," which was yourself.

Mr. Pennercole: Yes.

Mr. Whibley: "He agreed that I should put up the memorandum and sign it as the Assistant Party, and I will then discuss who, in addition to myself, will sign the memorandum."

It goes on to list the things that should be covered by the memorandum:

(b) The staff to be housed in the head office building in only a portion of the commission staff, and outline how they balance the decentralized

Univ. City Avenue;

and then it goes on.

"In recommending a developer, state the following reasons for your selection:

(a) There is no difference in carrying out similar
freedom projects.

(Type 1-150 - 1 follows)

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10:10 am

(Shibley)

following:

- (a) His past experience in carrying out similar projects on a leased-purchase agreement;
- (b) His past experience in managing large buildings;
- (c) His record of satisfaction of clients;
- (d) His experience in the field of design and construction including the personnel situation we hope to obtain by reason of restricting his total project to a single project at one time.

"We should also indicate the economies to the commission proceeding on this basis and showing ourselves as at least a straight rental proposition and the strength of the developer with regard to the development of the project and the respect of success of a venture of this type in this location. We should also make reference to the time and effort required and indicate immediately, indicating the savings to the commission by repositioning our present policy of renting large office areas against commissioning all and office departments in one building on a lease basis."

This, I gather to be the first proposal submitted to what was ultimately the June 23 submission to the commission. Is that correct?

XX

Mr. Gathercole: Yes, sir.

Mr. Shibley: The developer's proposal is to lease the building.

correct?

Mr. Gathercole: Yes, I think so. The developer's proposal.

any.

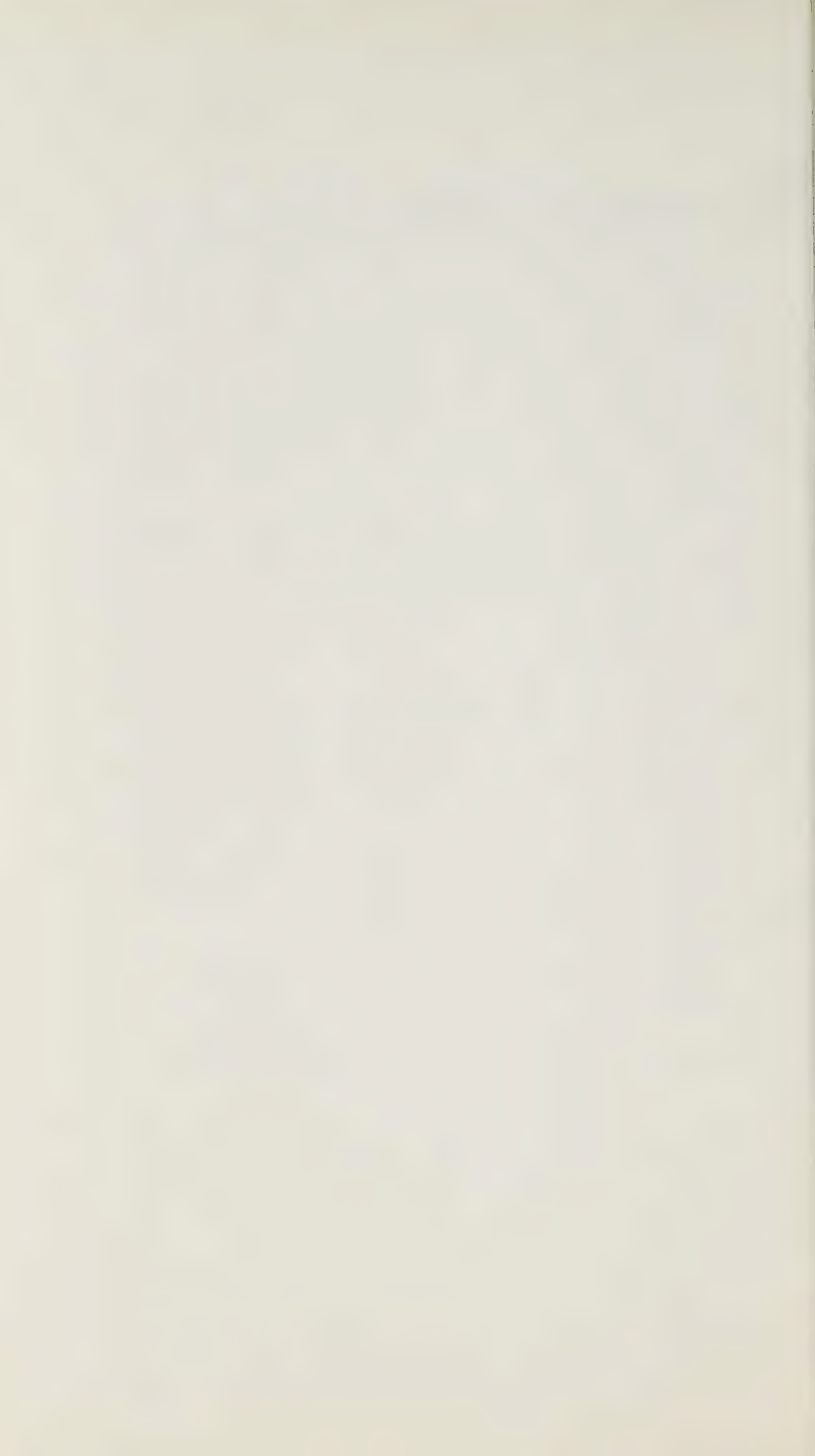
Mr. Shibley: The developer's proposal is to lease the building.

working now with some direction from you, deciding the content, deciding upon the content of what was to be the content of the members of the commission. Is that correct?

Mr. Gathercole: Yes, sir.

Mr. Shibley: I note, Mr. Gathercole, that in the portion respecting recommendation of a developer, it contains four things.

The first question I want to put to you is, what are the qualifications of a qualified developer?



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fvk

(Shibley)

be laid down and against which any of the four people in contention
e to be assessed?

Mr. Gathercole: Yes, I would say it would apply to all

r.

Mr. Shibley: What concerns me, in part, is the use of
words "his past experience" and "his past experience in managing,"
so forth. Was that wording intended to relate to one given
individual or was it intended to relate to the developer, whoever
might be?

Mr. Gathercole: Mr. Shibley, my interpretation is that
relates to ~~the~~ a developer. It's not a personal thing but rather
relates in an objective ~~xxxx~~ sense to a developer. That would
my interpretation.

Mr. ~~Sh~~ Shibley: You're not really answering my question.
want to know whether, when this memorandum was prepared, ~~was~~ an
identified developer ^{was} intended when the word "his" was employed or,
this wording intended to cover the developer whoever he might be?

Mr. Gathercole: I think the latter. That would be
summation. There was no doubt ~~of~~ ^{of} feeling at this time that Canada
are moving up there but on the other hand I think it's the
ter, that all developers are still in the running.

Mr. Shibley: You mentioned that Canada ~~←~~

Mr. Genest: Mr. Shibley, Mr. Chairman, I made this
comment the other day ^{It seems to me} ~~re~~ that this is a document ^{which} ~~was~~ never shown
Mr. Gathercole at the time it was ~~ma~~ made. It's a file memorandum
himself, I take it, by Mr. Candy and ~~←~~

Mr. Gathercole: I've never seen it.

Mr. Genest: ~~←~~ my respectful suggestion is that it is
helpful to ask Mr. Gathercole what Mr. Candy meant.

Mr. Shibley: Well, I might answer, Mr. Chairman, in
paragraph two there is a reference to a discussion with the chairman,
which is why I presume to review the content of this memorandum
on ~~him~~ him.

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fvk

Mr. Genest: Well, that ^{is} a discussion as to who ^{was} ~~is~~ going
sign the ~~memorandum~~ memorandum.

Mr. Shibley: Well, Mr. Gathercole, is your evidence,
n, that the content of the memorandum was not the subject of
cussion with Mr. Candy?

Mr. Gathercole: No, I don't recall having any discussion
bout what ~~the~~ items would be considered, or would be advanced in
s form. ~~I recall Mr. Candy did, asking me~~.

(Tape H 151 follows)



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B.G.

(Mr. Gathercole)

~~In this case~~ I recall Mr. Candy did, ask me as to whether he should initiate this, and my suggestion to him was that he should initiate it, that he should discuss it with the General Manager and with Mr. Sissons. And the reason for that is ^{this,} that Mr. Candy is architect for a wide variety of structures, and in the ~~normal~~ normal course he comes under Mr. Taylor, who is Stations Manager, and he comes under Mr. Campbell, who is Assistant Chief Engineer. And this is different ^{then,}

Mr. Shibley: Well, Mr. Gathercole, before you go on and in order to assist you, I would like to produce to you a memorandum ~~to you~~ dated June 20, 1972, from Mr. Sissons to Messrs. Gordon, ~~Nastich and Nastich~~ and Durand, ^{re} referable again to the same submission, to the Commission, which was ~~ultimately~~ ultimately dated June 23, 1972.

Mr. G. Hodgson: Mr. Shibley, I wonder if I don't want ~~to~~ the draft.

Mr. Shibley: Oh, don't put the draft there.

Mr. G. Hodgson: Mr. Shibley, I wonder if I could ask a question.

Mr. Chairman: Mr. Hodgson, (Victoria-Haliburton).

Mr. G. Hodgson: Thank you, Mr Chairman. I wondered why the word "Chairman" was blocked in this ~~underline~~, underlining in the June 6th memo.

Mr. Genest: June 6? ^{it} it is not on my copy.

Mr. Chairman: I think that blocking is perhaps done by Mr. Shibley.

Mr. G. Hodgson: I was just wondering why it was in there.

Mr. Shibley: Yes, I may have; it is my way of alerting myself to people who are involved on a document. I didn't know that, ~~then~~.

(?) ~~Mr. Chairman~~: Have you got my underlined copy?

Mr. Dean: Yes.

Mr. Genest: In the copy I have there is no underlining at all.

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Mr. ~~Shibley~~ ^{Shibley}: Because I have notations on mine ~~as well~~.

~~Let me have them.~~

~~Mr. Renwick~~ ^{Mr. Renwick}: ~~Let me have them.~~ ^{We} have them.

Mr. Chairman: I wondered why this was ~~so~~.

Mr. Renwick: Mr. Chairman, on Exhibit 70, mine seems to be cut off at the top. What is the handwriting up in the upper left-hand corner?

Mr. Walker: ~~Mr.~~ Candy.

Mr. Chairman: Just one moment here. Mr. Shibley has been asked a question, what was cut off at the top? Now, ^{the} name ~~is~~ Candy ~~at the top~~. Is that not on yours, Mr. Renwick?

Mr. ~~Renwick~~ ^{Renwick}: Yes, ^{Part of it}.

Mr. Genest: ~~Renwick~~ ^{It} ~~is~~ ^{is not} on mine, Mr. Chairman.

Mr. Shibley: Well now, again, what I have done ~~and~~ obviously what has happened here is my copy of this document has been used to make your copies, ~~appily~~, without some of my notations. But what I ~~have~~ have been doing with these documents in order to make them intelligent to me ~~is~~ ^{it} always has the name of someone, like Mr. Sissons, on top, so I wrote in ~~Candy~~ Candy to Sissons, so that I can see from the ~~face~~ page without having to go to the end of the document who prepared the document. And then, the underlining ~~that~~ ^{that} is on yours is just a sampling of what I have done with respect to each of the documents to point out what I consider the salient matters in any given document about which I wish to put questions.

Mr. Renwick: May I ~~ask~~ clarify this, the word Candy, at the top -

Mr. Shibley: That is my writing.

Mr. Renwick: - in the upper left-hand corner, is your writing. ~~Who is the~~ The other wording is part of the memorandum?

Mr. Shibley: That is correct.

Mr. Genest: I have the original here.

Mr. Renwick: "Hold with draft memo, etc., awaiting ~~redraft~~ KHC redraft".

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Mr. Genest: That is on the original.

Mr. Renwick: That is on the original, thank you.

Mr. Chairman: Mr. H. J. Sissons is typewritten on top, on yours.

Mr. Renwick: Thank you.

Mr. W. Newman: Mr. Chairman, ^{a question} ~~on page 2~~ on page 2

Mr. Chairman: ~~How~~ Mr. Newman.

Mr. W. Newman: ~~where~~ where it says "his, his and his",

is that underlined by you?

Mr. Shibley: Yes.

Mr. Chairman: This is ^{perhaps} one of the difficulties that

we have got ourselves into by not putting original documents into exhibits, and making a poor copy.

Mr. Genest: I have them all here.

Mr. Shibley: I am told by Mr. Bell that the reason my ~~was~~ copy was used in this case only was that it was the only copy of this document we had to work to when the copies were being made up. So I apologize to the committee for any confusion that has evolved.

Mr. Chairman: We had better make a note that some of the copies that we may have are not exact copies of ~~the original~~.

Page H-151-3 follows.



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PLG

(Mr. Chairman)

~~Some of the copies that we may have are not exact copies of~~
the original documents and if there is any question on that...

Mr. Genest: Perhaps, Mr. Chairman, I ~~can~~ might make available to Mr. Shibley 20 copies or so of the document as it appears in the Hydro files so they can be substituted.

Mr. Shibley: Thank you.

Mr. Chairman: Well, that would be a good ~~idea~~ idea; but I am afraid it may have happened in other documents too. That is the point I want to make.

Mr. Deans: It doesn't matter.

Mr. Shibley: ~~It doesn't matter.~~ It doesn't matter.

Mr. Chairman: I am just drawing it to the committee's attention in case it should become important. We should actually be working from original documents.

Mr. ~~Deans~~: Let us not get side-tracked on this.

Mr. Chairman: Well, now, ~~someone's document~~ you were in the process of entering another exhibit, I think, ~~Ex~~ Exhibit 71.

Mr. Renwick: Mr. Chairman, the suspense is killing me. When are we going to get that final document?

Mr. Shibley: You are going to get it in the course of the next three exhibits. I was asking Mr. Gathercole about your contribution, if you like, toward the memorandum that ultimately went to the Commission, and I will produce to you a memorandum dated June 20, 1972 to make the next exhibit.

Mr. Chairman: Yes. This is 71, as I understand it.

Mr. Shibley: And you will notice the memo says,

"This looks to me to be in pretty good shape. We are hoping to place it before the Commission next week. If you ~~agree~~ agree with its content, we will review with the chairman prior to final preparation."

~~And then~~ I now find I should submit the draft that was attached to that as the next exhibit, Exhibit 72.

~~Now~~ This is a draft dated June 19, 1972, of the submission to be made to the members of the Hydro Commission. Is that correct?

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PLG

Mr. Gathercole: Yes.

Mr. Shibley: I might tell members of the Commission

that it is substantially in the same form as the final document with the exception on page 10, and I would ask you to note on that page in the third paragraph,

"They are the only developers."

This is a reference to Canada Square.

"They are the only developers with past experience in a lease-purchase arrangement, which was completed about two years ago, and although the rental cost per square foot established at that time had provision for escalation, it has in fact recently been reduced due to the efficient management which he has provided."

There has been a variation in that one clause and that is the only reason for introducing the draft. I hadn't intended otherwise to make reference to it, but returning to Exhibit 71, Mr. Chairman, I gather that you reviewed this draft of June 19 before it was submitted to the Commission, is that correct?

Mr. Gathercole: Yes I did.

Mr. Shibley: So that at this point in time you accepted some measure of responsibility for the gabling of the information upon which the members of your commission were expected to come to some decision.

Mr. Gathercole: That is true.

Mr. Shibley: And in the review of that draft, did you have the benefit of the work-up documents that have been exhibited throughout these proceedings?

Mr. Gathercole: Yes I had, and had discussed it. The April 10 and other documents that came later with the General Manager and Mr. Sissons and Mr. Candy and also with Mr. Nastich. I think on one occasion as well with Mr. Dean.

Mr. Shibley: Now the next document which I am sure will interest everyone, including Mr. Renwick, is a document dated June 22,

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(Mr. Shibley) 1972 ~~1973~~
Mr. Gathercole: June 23?

Mr. Shibley: June 22. This is a contribution, if you

like, of Mr. - Jim someone - who would that be?

Mr. Genest: Durand.

Mr. Shibley: Durand, he is the public relations man.

Mr. Gathercole: Mr. Durand, yes, he is the director.

Mr. Shibley: To Mr. Bissons; he has also been asked

to review the submission to the commission?

Mr. Gathercole: Yes.

Mr. Shibley: And he makes comments as follows:

- 1) I notice on page 9 where the decision to recommend a particular developer is explained, no reference is made to the anticipated best return per dollar spent by Ontario Hydro.
- 2) Is there any comparison of existing annual cost for head office space with those anticipated if this proposal was implemented?
- 3) This report says we now use 809,582 square feet. The proposal will provide, in total, 803,483 square feet when the 350,000 square feet of commercial space is deducted, i.e. 6,000 square feet less. Will this precipitate needless questions?

Now I think he's in error in that respect, was he not

Mr. Gathercole?

Mr. Gathercole: I am sorry, I don't know that.

Mr. Shibley: All right, well we will leave that. And finally, "Would there be value in referring to the fact that there has been some evidence of public concern over our present practice which requires that we currently rent substantial space in six different locations? Recall questions in the Legislature. Presumably this proposal will have both economic and administrative (our ability to serve the public) advantages that should have a favourable impact on the public." That was the contribution of your public relations staff.

Mr. Gathercole: That's right.

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Mr. Shibley: So that in the formulation of the submission to the commission, again, ~~there~~ there were public relations considerations also taken into account.

Mr. Gathercole: Very definitely, yes. Particularly as it had been debated in the House, in the Legislature, from time to time, and people said, "Well you know, you shouldn't be locating it downtown. You should be locating it somewhere else." Nobody said, you know, where you should locate it, but it just shouldn't be on this site.

Mr. Shibley: Yes.

Mr. Gathercole: And so it was from that point of view that we were quite sensitive to some overtones arising from it.

Mr. Shibley: Fine. Well now then we come to the memorandum to the commission of June 23, 1972, which I will make the next exhibit.

Mr. Chairman: Exhibit 74.

Mr. Shibley: Now Mr. Gathercole, I take it this was the memorandum which was ultimately tabled with the commission.

Mr. Gathercole: Yes it was.

Mr. Shibley: At a meeting held on June 29, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And ~~and~~ just going through this document in a cursory manner, it is an application, really, for approval, or request for approval, for authority to enter into an agreement with Canada Square to design, finance, construct, manage and maintain a new head office administration building. And then it sets out that the agreement would be a lease purchase for a term of 30 years, starting on the date of completion of the building. During the term the commission had to pay a fixed monthly rental for the space and at maturity acquiring the building for one dollar. And then the decision to locate the building at this particular site based on the criteria outlined ^{close to provincial government}

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(Mr. Shibley)

buildings; Present financial investments the commission has in other buildings at 60 Murray Street and 11 Orde Street; it's the centre of gravity for transportation. Then it gives some data on personnel. Head office staff as of December 31, 1971 amounted to 4,866 personnel,

Tape H-154 follows

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M.R.

(Mr. Shibley)

...~~present as at December 31, 1971 amounted to 4866 personnel~~
 balance of staff amounted to 11,500 dispersed throughout
 the province; ~~the~~^F existing head office building completed in
 1938 and gives some history on that. Then it goes on;
 "At the present time the head office is housed in eight
 different locations, six of which are rented facilities
 consisting of a total of 480,000 square feet of net rentable
 area at an annual rental of approximately \$3,600,000 as
 against approximately 330,000 square feet at 620 University
 and at Orde Street ~~owned~~ owned by the commission.

"The cost of this geographical scatter ~~is~~ \$750,000
 per year." I should tell members of the committee that there
 were appendixes filed earlier that ~~break~~^{break} out some of these
 figures. "It was decided in 1968 that a new head office
 building should be constructed to house all our facilities
 under one roof and the necessary drawings and documents were
 prepared, based on the first ~~stage~~^{stage} of a two-stage development.
 On completion of this at the end of 1969 due to high interest
 rates prevailing and the concern about adding inflationary
 pressures to the overheated economy at that time, a decision
 was made to defer construction."

"Also proposed to retain the existing five-storey
 building on Murray Street and the adjoining three-storey
 building on Orde Street. This is still our intention under
 the new proposals.

Skipping to ~~paragraph~~ paragraph three. "In view of the
 continued expectation of heavy capital demands by Hydro for
 our capital ~~construction~~ programme over the next few years,
 it was decided to pursue ~~this~~^{this} possibility of having this
 building constructed on a lease-purchase arrangement."

Then carrying on ~~3~~ "In order to achieve this
 arrangement five developers, who had voluntarily indicated
 their interest in this project, were invited to submit a

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(Mr. Shibley)

proposal based on certain criteria as specifications; four of whom submitted proposals, ~~and~~ Skipping over to Page 4 at the top, ⁶ proposals are based on a fixed cost per square foot per year to the commission with escalation only to apply on the cost of operation and maintenance of the building, the commission paying the taxes on the building and property and the cost of electrical energy for lighting and office equipment.

"All other costs borne by the developer who would be responsible for the complete maintenance of the building and grounds, The operation of the air conditioning system, maintenance of elevators, etc., with the only exception being security guards provided by the commission."

I might just stop there, Mr. Gathercole. I did not find any reference in this memorandum to the effect of a variable rate of foreign exchange should the Canada Square proposal be adopted. Is that not correct?

Mr. Gathercole: I think that is the case and that was one of the details to be worked out

Mr. Shibley: Thereafter?

Mr. Gathercole: Yes

Mr. Shibley: I think - yes, that's right, but in this first submission there was no reference to that variable, it did enter into subsequent documentation that was developed.

Mr. Gathercole: Yes.

Mr. Shibley: For the advice and consideration of the commission.

Then, carrying on, the rental cost, per square foot are set out and that is the same schedule that was in part of the earlier documentation without prorating. Is that correct?

Mr. Gathercole: That is true. Yes

xxxx

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Mr. Shibley: "As our original design was

estimated to cost \$29 per square foot as of December 31, 1969, and ~~A~~ ^{the} composite construction cost index has increased by approximately 25 per cent, a cost of \$34 per square foot is minimum in order to provide the quality and character of building required. The submitted proposals have therefore been prorated on an equal basis to provide for a building with a capital cost of \$34 per square foot in all cases as follows."

And then the schedule with prorating is set out. So then, just stopping there, Mr. Gathercole, I gather that the members of the commission, from the outset of their deliberations, were made aware of this prorating method of approaching the comparison of these submissions?

Mr. Gathercole: That is true.

Mr. Shibley: And again, at this juncture, one of the other things omitted, I believe is any reference to the fact that if the building costs were reduced, ~~then~~ the rent would be reduced?

Mr. Gathercole: That was worked out later.

Mr. Shibley: Again, that was one of the pluses that evolved from subsequent negotiation. Is that correct?

Mr. Gathercole: Yes, that is true.

Mr. Shibley: So that the commission at ~~the~~ ^{that} juncture were working to figures that might have been reduced, depending on the reduction in the cost of building?

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~~that might have been achieved by the reduction~~
~~in cost of building.~~

Mr. Gathercole: It took a long time ~~to~~ four and a half months of negotiation from this date to consummation of the agreement.

Mr. Shibley: Then it goes on,-

"In addition to the above costs an amount of \$2.02 a square foot per year must be added to cover utility, business taxes, electrical energy, carpeting costs, lighting, tube replacements, drapes and security," and then it gives the ultimate cost after operating with all built in charges, is that correct?

Mr. Gathercole: yes.

Mr. Shibley: Then skipping over to page 6, toward the bottom part,-

"In arriving at a decision to recommend a particular developer, the following features were considered in order of priority"

and then it goes on,-

(a) in-house capability to handle the package;

(b) previous experience in handling such arrangements and building management;

(c) capability to handle a project of this complexity and scope

(d) Minimum of other commitments and interests

(e) agreement to retain an outside consulting architect, and

(f) previous client satisfaction.

were the yardsticks so to speak against which the four were assessed and then it goes on,-

"On examining the various proposals and reviewing the qualifications and past experience of the four developers, it is suggested that Canada Square Corporation best meets

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(Mr. Shibley)

these requirements and the most satisfactory working arrangement could be made with them.

Their advantageous financing arrangements are implicit in their arrangements, including European sources.

Their proposal was the only one based on past experience in a lease purchase arrangement".

I am just stopping there - that reference to financing was predicated upon interest rates of I believe seven and ^{SEVEN AND ONE} ~~and~~ half per cent.

Mr. Gathercole: Yes. There was a presumption that money would come from European sources and it said "including" but it didn't say, you know, that those were the ^{exclusive} ~~exclusive~~ sources. It said "including European sources" and there was some presumption that since money had come from Europe that this money for this building might be accessible from Europe.

Mr. Shibley: Then it goes on -

"Their proposal was the only one based on past experience in a lease purchase arrangement, which was completed about two years ago" -

I gather that is a reference to the OISE building?

Mr. Gathercole: Yes, it is.

Mr. Shibley: "Although the rental costs per square foot established at that time had provision for escalation, it has in fact recently been reduced due to very efficient management".

The members of the committee will note that that's the variation in this document from the earlier draft, I don't know how significant it is but for completeness of your own information I put them both in.

"The foregoing recommendation is based on a detailed review of the alternate proposals carried out in

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11.30-11.35 a.m.
M.F.

H - 155 - 3

(Mr. Shibley)

~~conjunction~~ conjunction with the finance branch".

This is signed now by Mr. Candy, ^{by} ~~and~~ Mr. Gordon, the general manager, and Mr. Sissons, assistant general manager of services, and it is directed to you as chairman, I gather, to be tabled by you.

Mr. Gathercole: And the commissioners.

Mr. Shibley: Yes. So this document now bears the signature of three persons who, I gather, are intended to assume primary responsibility for its content and the recommendations contained therein.

Mr. Gathercole: That is correct.

Mr. Shibley: Mr. Gathercole, I have been asking you in the past about the pro-rating and you have given the members the benefit of your comments on that. Again, was the question of pro-rating assessed or considered by Mr. Nastich of your organization?

Mr. Gathercole: Yes it was, and I think it was something that all of us had very much in mind as to, do you pro-rate down or do you pro-rate up; and if you pro-rate down you arrive at the same ultimate figures, the same relative figures, ^{but} on a lower plane.

On the other hand we felt that this represented a quality building.

Mr. Shibley: Did Mr. Nastich discuss with you -----

Tape H - 156 follows

↓



May 30/73
11:35 - 11:40 am.
M.S.

(Mr. Shibley)

~~did Mr. Nastich discuss with you~~ the validity of this method of prorating?

Mr. Gathercole: Yes, he did. ~~Yes.~~

Mr. Shibley: And what was the nature of the exchange between you and he?

Mr. Gathercole: Well, he expressed some question as to whether you prorated ^{at} \$34, particularly as to ~~whether~~ whether the \$34 was a representative figure for ^{the} a quality of building at that time. ~~Mr.~~ I think that was his question about it.

Mr. Shibley: Yes. I'm producing to you a memorandum prepared by Mr. Nastich, dated June 26, 1972, to Mr. Sissons, and ask that it be made the next ~~an~~ exhibit.

Mr. Chairman: Seventy-five.

Mr. Shibley: ~~Exhibit~~. And it starts off: "I have read your excellent draft Commission memorandum and would comment as follows:"

I take it, Mr. Gathercole, he's talking about the draft of the June 23 memorandum to the Commission?

Mr. Gathercole: Yes.

Mr. Shibley: And it had yet to go to the Commission as of June 26, your meeting ~~being~~ on June 29?

Mr. Gathercole: Yes.

Mr. Shibley:

"1. The other alternatives that were considered should either be included in the memorandum or perhaps the supporting report should be attached.

The other alternatives were:

- (a) Financing through a mortgage (which would not affect our capital financing program) and constructing the building ourselves.

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- (b) Financing through mortgages and making the funds available to the developer as part of his project. This would tend to give us minimum interest cost.

- ~~Now, Mr. Gathercole:~~
2. The reason for not using a tender approach in this case should be more explicitly stated. As you know, I have been concerned that we have sound reasons for not using a tendering approach.
 3. The lowest evaluated cost is with Horizon Developments, ~~am~~ although not by much. Can we substantiate the qualitative line of reasons for choosing Canada Square?
 4. I believe that our method of prorating up the capital cost of the building so as to eliminate ~~the~~ the differences in the quality of building is ingenious. Is it a ~~valid~~ valid approach in terms of actual building factors?

Now, Mr. ~~Gathercole~~ Gathercole, I want to take you back on the various points raised by Mr. Nastich in this memorandum. Would you agree with me that each of the points raised are matters of importance in terms of what should have been before the Commission in its deliberation? Do you agree with that?

Mr. Gathercole: Yes. May I just clarify this? I didn't receive a copy of this memorandum, although I was aware of what Mr. Nastich was suggesting.

Mr. Shibley: Yes. Well, let's go through the memorandum. He first starts out and says that you should outline as part of the report, or as supplementary material, the other alternatives. Was that done?

Mr. Gathercole: It had been done in the April 10 report, and I think it was subsequently done, yes, it was subsequently done.

Mr. Shibley: That's something about which I've been

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11:35 - 11:40 am.
M.S.

(Mr. Shibley)

wondering in my own review, Mr. Gathercole. Was that April 10 report tabled with the Commission at its meeting of June 29?

Mr. Gathercole: At the meeting of June 29 Mr. Nastich reviewed ~~and~~ in a general way ~~was~~ in the April 10 report, and the various alternatives; ~~there was~~ there was very extensive discussion about that. The result of that was the Commission decided that ~~it should not take any action at that time, but~~ ~~rather that it should be studied further and that we should~~ rather that it should be studied further and that we should obtain a more specialized knowledgeable legal assistance in order to advise us in connection ~~with it~~.

Mr. Shibley: Yes. And just to take that to its completion, was it then that the decision was taken to retain Mr. James McCallum ----

Mr. Gathercole: Yes, it was.

Mr. Shibley: ---- a lawyer of expertise in this field?

Mr. Gathercole: Yes.

Mr. Shibley: And he is outside counsel.

Mr. Gathercole: I think it was Mr. Nastich who recommended him. I mean, what Mr. Nastich is saying, and I think quite properly, ~~that~~ ~~we~~ ~~are~~ ~~convinced~~ ~~it's~~ ~~a~~ ~~pretty~~ complicated arrangement, ~~and~~ ~~that~~ ~~there~~ ~~are~~ ~~a~~ ~~number~~ ~~of~~ ~~things~~ ~~look~~ ~~to~~ ~~be~~ ~~perfectly~~ ~~satisfactory~~ ~~and~~ ~~no~~ ~~doubt~~ ~~we~~ ~~are~~ ~~moving~~ ~~on~~ ~~the~~ ~~right~~ ~~track~~. On the other hand, let's look at some of these financial implications and ~~therefore~~.

Tape H 157 follows

H-157-1

Mr. Gathercole

On the other hand, let's look at some of these financial implications, and therefore he has raised some, ~~which~~ in my judgement quite properly, ~~and~~ therefore, we did not take any action on the submission at that time. It was too complicated, and the commission said "we want to have a look at it, and understand what is in it." ~~and~~ I think, also, Mr. Nastich made the point that we, in finance, are not as knowledgeable as we should be in these areas of development and we should have someone who is. ~~And~~ The decision was then made by the commission, Mr. McCallum's name was suggested, and so ~~that~~ arrangements were made later to have him engaged by the commission to advise it and to carry on, subsequently, certain negotiations. ~~And~~ Meetings were held, I think, in the early ~~day~~.

Mr. Shibley: Well, Mr. Gathercole, we'll get to that.

Mr. Gathercole: I'm sorry.

Mr. Shibley: I want to bring you back to this memorandum just for the moment, ~~and~~ we will be dealing with what happened at the commission meeting in greater detail, ~~but~~ are you telling us that, with respect to item 1 in this memorandum, the information that MR. Nastich said should be available to the commission was outlined by him personally to the commission ~~at~~ at the commission meeting of June 29?

Mr. Gathercole: Not in great detail, no. But there was discussion of the various alternative ~~proposals~~ bidders, and just a general outline by him of some of the implications.

Mr. Shibley: And you mentioned that he was working from the April 10 memorandum?

Mr. Gathercole: That is right. ~~He~~ ^{he} had it there, ~~he~~ ^{he} had copies.

Mr. Shibley: But copies of that memorandum were not left with the committee?

Mr. Gathercole: I think he said ~~XXXXXX~~ if ~~anyone~~ ^{anyone} wished to read a copy. I am not sure of this, but I think there was some suggestion ~~that~~ ^{that} if anyone wished to read a copy of this report, they could. I think it should be ~~understand~~ ^{understood}, you know,



B-157.2

Mr. Gathercole:

But we have a great many matters to consider, and the commissioners don't get involved in ^{the} detailed working up of these recommendations.

Mr. Shibley: ~~Now~~ ^{Let's} go on with item 2, ~~now~~ he says,

"We should outline the reasons for not using a tender approach".

Was this made part of the written or oral presentation to the meeting of the commission on the 29th?

Mr. Gathercole: It was part of the oral presentation, ~~and~~ it was a matter that was discussed and was something that we were all a little bit sensitive to. If you are going to go along this route ~~there are~~ there are, obviously, risks that you are not taking if you go ~~by~~ a public tender route. ~~But~~ On the other hand, if you go ~~by~~ ^{the} public tender or wide open route, or even on a prequalified selection basis, you are still not out of difficulties in arriving at a decision.

Mr. Shibley: Well, at the moment, Mr. Gathercole, I don't want to get into the merits of it.

Mr. Gathercole: No.

Mr. Shibley: I just want to know what was done for the benefit of the commission.

Mr. Gathercole: There were observations made about this.

Mr. Shibley: All right. Then going on to item 3, ~~the~~ ^{the} notes ~~that~~ the lowest evaluated cost is with Horizon. Can we substantiate the qualitative line of reasoning for choosing Canada Square? What, if anything, was developed for the benefit of the commission in respect of that question?

IT WAS

Mr. Gathercole: ~~The~~ ^{AN} evaluation, which was made by our technical people, that the design and the facility which ~~had been~~ ^{would be} offered by Canada Square would be superior to that of Horizon. I might say that ~~subsequent~~ ^{subsequent} there were calculations made to show that the 10 cent differential was not merited, that the maintenance components had been ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}, whereas it should have been ~~reduced~~ ^{reduced}.

Feb. 14, 1973
10:50 am
V.H.

CHAIRMAN: MACBETH

(Mr. Gathercole)

whereas it should have been ~~included~~ included in the bid of Horizon on the basis of 1971 costs which had escalated up to 1975 and it added something in the order of three ~~thousand~~ ^{thousand} costs.

Mr. Gathercole: I am not sure that I am qualified to say that. I am not a qualified and responsible person in your organization.

Mr. Gathercole: Yes.

Mr. Gathercole: He is now dealing with matters

within the sphere of his responsibility and expertise, is he not?

Mr. Gathercole: Yes, he is.

Mr. Shirley: I take it that the evaluation of

the workup material which had taken some days to get into this committee had not been available in the case of Horizon Development having provided proposals with the lowest evaluated cost. Is that correct?

Mr. Gathercole: Yes.

Mr. Shirley: And that, the reason, I am thinking, that

I am going by is that the reason that they decided that the basis for selecting Canada Square in the case of Horizon Development is one of qualitative line of reasoning.

Mr. Gathercole: No.

I would like to understand what he and the chairman meant when they said that there was a need for a design for selection other than the design which had provided the lowest evaluated cost.

Mr. Shirley:

Mr. Gathercole: I am not sure that I have heard

were contained in the fact that the fact that Canada

Square would concentrate in general on one project, that

it had a design and that it was a design which was

flexible and which had been very well received by those

who had occupied the premises and that the other aspects

of this harmonious working relationship, that these are

the

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11:45 am
b1

(Mr. Gathercole)

the things that Mr. Nastich is referring to ^{and is saying?} Are they completely valid? ~~Now let's look at them.~~ He was giving ~~the~~ ^{his} point of view ~~from~~ ^{as} a financial man and quite properly, ~~is~~ ^{is} looking at it, that's his job. On the other hand

Mr. Shibley: That's the point, Mr. Gathercole, I don't want to cut you off, but I gather as a financial man, he has concluded that the financial terms as propounded by Horizon were the best of the four offers.

Mr. Gathercole: On the basis of the figures that are ~~there~~ ^{there} shown, he is saying, "Yes there is 10¢ difference, but ^{is} that 10¢ was outweighed by other qualitative factors?" And what Mr. Gordon, Mr. Sissons and Mr. Candy ~~are~~ saying is: "It is, yes."

Mr. Shibley: And that was a 10¢ disparity established subsequent to the prorating process?

Mr. Gathercole: Yes.

Mr. Shibley: Now he is ~~telescoping~~ ^{telescoping} his attention here on the fact that even with prorating Horizon is still 10¢ lower than Canada Square. Now ~~we~~ ^{we} have we got valid reasons for selecting Canada Square on what is called here "a qualitative line of reasoning?"

Mr. Gathercole: Yes, I would say that the reasons ~~we~~ ^{we} that were advanced ~~were~~ ^{were} fully presented that small margin. There isn't any question of that in our minds.

Mr. Shibley: Well, when you say "a small margin" 10¢ a square foot is \$100,000 or more per annum, is that correct? Over the 30 year term of this lease, is that correct?

Mr. Gathercole: Yes

Mr. Shibley: So even 10¢ is a meaningful sum, that's what I am driving at.



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V.H.

Mr. Gathercole: Yes, I agree with you.

Mr. Shibley: Then he goes on, I just want to complete
this item 4:

"I believe ^{that} our method of prorating ^{up} the
capital cost of the building so as to eliminate
the differences ~~which~~ in the quality of the building
is ingenious."

And I will leave it to him to explain what he means by that.

Mr. Gathercole: So will I!

Mr. Shibley: Yes. The real question is put by
himself in the last sentence of that paragraph:

~~"Is it a valid approach in terms of actual building
practise."~~ ^{ld}

follows
H-159 ~~XXXXXX~~



May 30, 1973

11.50-11.55a.m.
BA.

CHAIRMAN: MR. MACBETH)

(Mr. Shibley)

~~of that paragraph~~ Is it a valid approach in terms of actual building factors? Now, Mr. Gathercole, what is of interest is that the Assistant General ~~Manager~~ Manager of finance is making an enquiry as to whether that approach is valid. Is that correct?

Mr. Gathercole: Yes, he is raising the question.

You gentlemen now are saying that there is an agreement or the possibility of an ~~an~~ agreement. I think from a financial point of view you want to look at these things, examine into them, because I believe that these are things on which we might be caught out, we may ultimately founder if we don't have some advantages which may offset some of these disadvantages.

It is a ~~rather~~ complicated package.

Mr. Shibley: That is not quite the way it is

worded, Mr. Gathercole, with respect. I think it really is putting in question, and I would like to know what followed upon the enquiry. He is asking, is it a valid approach in terms of actual building factors; and I want to know who did ~~what~~ what, and who said what in that connection, because I think it is fairly material to this committee to know.

Mr. Gathercole: He is referring to the question of is it valid to be ~~pro~~rating not based upon the ~~area~~ quality of building that you wish. In other words, is the quality of building at the time this structure is erected, is that quality going to work out at \$34.00 a ~~sq~~ square foot? If it isn't, we shouldn't be using \$34.00 a square foot. That is what he is saying. Now, I think he will also - he could have used a \$32.00 figure and it wouldn't have changed the relationship.

Mr. Shibley: Then, Mr. Gathercole, do I take your answer in to be that the emphasis ~~is~~ that enquiry should be placed on the last portion of it in terms of actual building factors.

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B.A.

Mr. Shibley: He is, in fact, saying, is it valid to

Mr. Gathercole: I think that is what he is saying. Is \$34.00 the proper benchmark that we will be using to obtain the quality of building that we desire. I am not speaking about something that is ornamental or lavish, but the type of quality building appropriate to that site. I think that is what he is saying.

I just clarify one point here. ~~另據本局查大南公司所定之房屋租金及各項費用如下表~~
~~茲將該項收入開列~~ You have pointed, Mr. Shibley, I think ~~該項~~ there
 is a differential of 10 cents per square foot which would make
 a difference of \$100,000 a year, and I believe that -- well
 I understand from Mr. Gathercole and I wanted to clear this
 up by asking you this question, ~~On~~ subsequent calculations on
 the maintenance costs, did I gather rightly that Horizon made
 a mistake and that actually this would have changed the figures?

Mr. B. Newman: Then, all things being equal, Canada Square would have been the lowest, is that right?

Mr. Renwick : Mr. Chairman, would Mr. Gathercole try to reconcile the last paragraph of the submission to the

(Type H-160 follows)



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J.H. ...
J.P.

(Mr. Renwick)

~~recommendations and proposals which were made in the memorandum~~
 on Exhibit 74, which states that the Commission's recommendation is based on a detailed review of the alternate proposals carried out in conjunction with the finance branch. The memorandum of June 26, being Exhibit 75, from the head of the finance branch to Mr. Simpson.

It would appear to me from the substantial questions raised in Exhibit 75 that the last paragraph of the submission to the commission is in direct conflict with it.

Mr. Cathersole: Well, Mr. Renwick, we have been going over the various documents which have been prepared by members of the finance branch, and which have been analysed in the various proposals and with a pretty heavy leaning towards the accepted proposal with Canada Square or Horizon. Mr. Nastich has been looking at this, and, well, he's a nice man too, Mr. Nastich's appointment is more recent, that is one aspect of it. Now whether that has any part to do with it, but when Mr. Nastich went into this, ^{Mr. Nastich} assumed these responsibilities which are very heavy responsibilities, certainly we saw that he was going to look over everything with very much more care than we did, that from a financial point of view we were going to be doing all the proper things and in the most economical way.

Mr. Nastich is looking at these various proposals and is arriving at conclusions that these proposals are not into a big ² game, and let's look at it.

Mr. Renwick: Mr. Chairman, let me try to zero in on the specific reason for my question. I am not going to pursue it at any great length but I want to zero in for at least the purpose, so that the record will be clear about my concern. One of the fundamental ^{bases} ~~bases~~ on which Canada Square was recommended as the developer in the memorandum of June 23, 1973, ^{it} stated at the bottom of page 4: "These submitted proposals have therefore been prepared on the basis of providing for a building with a capacity of 22,000 seats. It is assumed that the following follows, and

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(Mr. Renwick)

the projection is then made of the relative cost at \$34 per square foot of the four proposals.*

At the end of the memorandum it states: "The foregoing recommendation" - that's the whole of the memorandum - "is based on a detailed review of the alternate proposals carried out in conjunction with the finance branch, and three days later, having read the memorandum, the head of the finance branch raises in item 4, without in any way indicating that the first three questions are not also significantly important, a fundamental question with respect to the validity of that very ~~recommendation~~ projection."

Now my question, therefore, is - is not the submission to the Commission, stating that the detailed review of the alternate proposals carried out in conjunction with the finance branch, in the light of Mr. Nastich's comment on paragraph 4, a direct conflict - if not misleading?

Mr. Gathercole: I don't, Mr. Renwick, look at it that way; they were certainly. The foregoing recommendation is based on detailed review of alternative proposals carried out in conjunction with the finance branch. That is a ~~very important~~ ^{well} documented all the way through.

In the case of Mr. Nastich's memorandum of June 26, he is saying, well, let's look at a few of these points.

Mr. Renwick: No, I am speaking, Mr. Gathercole, of the one point, the question of the forward ~~recommendation~~ ^{projection}. Mr. Nastich asks whether that's a valid approach; and yet on my cursory reading of the Exhibit no. 74, it is a fundamental part of the decision to recommend Canada Square.

(tape H-101 follows)

11.00 to 12.05 pm
171

Mr. Renwick:

~~Mr. Chairman: Mr. Renwick is asking is can you reconcile the~~

~~and anybody in finance will tell you you can pro rate~~

~~Mr. Chairman: Mr. Renwick is asking is can you reconcile the~~

~~and anybody in finance will tell you you can pro rate~~

~~down and you get the same relativity.~~

Mr. Gathencroft: Mr. Westich isn't saying that it isn't a valid approach. All he is asking is, let's look at it. Is it a valid approach? That's the question that he poses. He's not saying it isn't a valid approach and, as a matter of fact, he himself, and anybody in finance will tell you you can pro rate down and you get the same relativity.

Mr. Renwick: Mr. Chairman, I would also draw to the attention of the committee that there is no indication that the Assistant general manager of finance signed the submission to the commission.

Mr. Chairman: Any further questions at this time?

Mr. R.G. Hodgson: Yes, Mr. Chairman, I would like to ask Mr. Gathencroft.

~~Mr. Chairman: Mr. Renwick is asking is can you reconcile the~~

Mr. J.B. Allan: Mr. Chairman, I think there will be some more questions. Do you wish to have them now or do you wish to continue until ~~they~~ finished?

Mr. Chairman: Well, if there are more to be many I thought by the silence that we had come to a break but then Mr. Hodgson came in. Then he came in Mr. Walker did and yourself, so I think it might be a reasonable time to take a break, but just leave us with the question of the maintenance costs.

Mr. Shilling: Mr. Chairman, I would like to ask Mr. Renwick. In presenting a bill to the commission, the parties to the maintenance costs. I don't have any question about it. I would like you to have your people provide to me whatever material is in their possession.

Mr. Chairman: Mr. Renwick is asking is can you reconcile the

Mr. Chairman: Mr. Renwick is asking is can you reconcile the maintenance costs of the bill submitted to the commission, which shows maintenance costs of the bill submitted to the commission.

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12.00 to 12.05 pm
fvk

r. Shibley)
roughout.

Mr. Genest: May I help at this stage, Mr. Shibley. I think that ~~the committee~~ we're wandering around here. You have a memorandum of July 6 by Mr. Deans.

Mr. Shibley: Of what year?

Mr. Genest: Of 1972, which followed on Mr. Nastich's ^{you} questions and ~~we~~ also have evidence that the commission refused to act on the recommendation so that these studies could be made. It was only after the studies were made that the commission ~~recommended~~ approved the contract in a meeting in July, on July 19. I think that ~~Mr.~~ ^{Mr.} Deans's memorandum contains a re-evaluation of the Horizon ~~is~~.

Mr. Shibley: Including the ~~the~~

Mr. Genest: Page four of the memorandum of July 6, 1972.

Mr. Shibley: ~~that is~~

Mr. Chairman: I think this is a point that we can adjourn ^{at} ~~the~~ leaves the two counsels, Mr. Genest and Mr. Shibley, to put their heads together on and if we need more information I'm sure that Hydro will do their best to provide it.

It being 12 of the clock, Committee took recess.

LIST OF EXHIBITS

Exhibit 68. Letter - April 11, 1972

Ellis-Don Ltd. to K.H. Candy
re Hydro Office Building Proposal

69. Memo - April 13, 1972

F.J. Mink to M. Nastich
re Head Office Development

70. Memo - June 6, 1972

K.H. Candy to H.J. Sissons
re Contents of Memorandum to Commission

71. Memo - June 20, 1972

H.J. Sissons to D.J. Gordon,
M. Nastich and J.J. Durand
re Draft of Memorandum to Commission

72. Draft of Memorandum to Commission - June 19, 1972

73. Memo - June 22, 1972

J.J. Durand to H.J. Sissons
re Draft of Memorandum to Commission

74. Memorandum to Commission - June 23, 1972

From K.H. Candy, H.J. Sissons
and D.J. Gordon

75. Memo - June 26, 1972

M. Nastich to H.J. Sissons
re Draft of Memorandum to Commission

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, May 30, 1973.

Afternoon session

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Ontario Hydro counsel:	Pierre Genest
	James McCallum
Canada Square Counsel:	Douglas Laidlaw
Chairman, Ontario Hydro:	George E. Gathercole

List of exhibits introduced during this sitting appears on last page



May 30, 1973
2:10 - 2:15 p.m.
B.G.

[The committee resumed at 2:10 o'clock, p.m.]
(Mr. Chairman) I will call the meeting to

~~order and~~ ask Mr. ~~Genest~~ Genest, who I understand has a statement to make, if he would make ~~his~~ that statement at this time. Then, we will go over to Mr. Glen Hodgson.

Mr. Genest: Thank you, Mr. Chairman, I want to read this statement because I may have contributed

Mr. Chairman: Mr. Genest, is this going to be a long statement?

Mr. Genest: No, a very short one.

Mr. Chairman: Well, it might be wise if you come forward.

Mr. Genest: I may have contributed to a misconception in the committee ~~but~~ by my remarks at the close. Mr. Gathercole was being asked, I think by Mr. Newman, as to the effect of escalation in ~~maintenance~~ maintenance costs over 1971 on the Horizon proposal; and I stated to Mr. Shibley that there was a memorandum to Mr. Dean, dated July 6, which dealt with ~~that~~ that. ~~That~~ That was mistaken; there is ~~I think~~ Mr. Shibley will be putting that memorandum into evidence. What happened was that at the Commission meeting on the 29th, the questions raised by Mr. Nastich were discussed and the Commission ordered more study to be made, ~~and~~ Mr. Dean w did work up figures which will ~~become~~ be in evidence, but they are not based on the factors mentioned by Mr. Gathercole this morning. The escalation in maintenance costs or a thirty-three-year lease period, mentioned in the Horizon proposal, those factors did not enter into the Commission's thinking at that time in any way, at all.

They are not a factor in the decision-making process, in the relevant times in any way. So, I didn't want that misconception to stay with the committee, because a statement of mine may have contributed to it. Mr. Dean did not deal with that aspect of the matter, as I think will be made clear by the exhibits which will be filed.

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2:10 - 2:15 p.m.
B.G.

Mr. Chairman: All right, you are on the record,
I think Mr. Deans ~~is~~^{was} interested in it too, so ~~will you~~^{will you}

Mr. Genest: ~~Yes~~, Mr. Deans and Mr. Renwick; I will inform them.

Mr. Chairman: ~~make sure~~^{it is} ~~they are~~ drawn to their attention?

Mr. Genest: Yes, I will do that.

Mr. Walker: Mr. Chairman, reference was just made to a thirty-three-year lease arrangement. Is it intended that there will be evidence that will come out relative to that on ~~the~~ Horizon?

Mr. Shibley: Yes.

Mr. Walker: The Horizon was a thirty-three-year^{lease}?

Genest:
Mr. Shibley: ~~Chairman:~~ Right; that's right.

Mr. Shibley: It is part of the evidence now in that it is part of the Horizon proposals~~is~~ if it was read through, ~~that~~ It was originally predicated on a thirty-three-year basis. On the other hand, there is other evidence that Horizon subsequently agreed to work to the terms of reference, I believe.

Mr. Genest: Yes, that is unclear as to ~~now~~^{now} ~~but~~, but I do want to make the point that those factors did not enter into the Commission's thinking at the June, July, August, September^{er} timex in question. I didn't want to leave that misconception with the committee, and, as I said, I may have contributed to it by representing that that was dealt with in Mr. Dean's memorandum and it isn't at all. That will be made clear.

Mr. Chairman: Thanks, Mr. Genest. Mr. Renwick, we haven't got a new witness, he was just correcting an impression that he may have left with us and that will be in your transcript ~~of~~ the start of this afternoon's proceedings.

Mr. Renwick: We might call him later, Mr. Chairman.

Mr. Chairman: I don't know. He has just proved himself unreliable; I don't know whether we want to use him or not!

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B.G.

Mr. Shibley; He made it clear that he was not
waiving that privilege.

~~Mr. Chairman: Mr. Gathercole, if you will -~~

(Tape H-162- H-163 follows)

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2.15-2.20 p.m.
M.F.

H - 163 - 1

Chairman: Mr. MacBeth

Mr. Chairman: Mr. Gathercole, if you will ~~reassume~~ reassume your seat and the microphone, and Mr. Hodgson you had a question to ask?

Mr. ^{R.G.} Glen Hodgson: Yes. I wanted to ask a question about document 75, the June 26th m_emo, relative to item 4 with regard to the pro^grating~~s~~.

Mr. Gathercole, I have a problem of rationalizing in my own mind how a person in Mr. Nastich's responsibility would, if he was familiar with this sort of ^{MYTH DOLOGY} mythology, being applied in analysis throughout Hydro's operation, take this approach and use the word "ingenious" in that fourth line in that context.

If he had used the other spelling, instead of the "i" a "ü", I could have perhaps got a different meaning from it. Could you assist me? Is this a common analysis ^{MYTH DOLOGY} mythology that is being used here, that is used throughout Hydro?

Mr. Chairman: Any comment on that, Mr. Gathercole? I think you indicated earlier that you didn't know what he meant by ingenious at this point.

Mr. Gathercole: No. I think Mr. Nastich can explain it. I did attempt to give Mr. Nastich's interpretation which you related to me which was to the effect that he was raising the question of is \$34 per square foot a figure which will equate a high quality building. He didn't have the knowledge about that and he was just raising that question.

Mr. ^{R.C.} Glen Hodgson: He wasn't raising another question that it might be "inventive" or "adaptive", which that word could mean?

Mr. Gathercole: It could mean that, yes. It could mean too that it was a very excellent way of proceeding with it. You know, you say a person is quite ingenious, he is adopting an ingenious way of doing things, but the word has



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(Mr. Gathercole)

two meanings and it is subject to that interpretation. But I would be repeating myself if I said any more about it and I think that Mr. Nastich should be relied upon to give his own interpretation of what exactly ^{as I} meant by that phrase, by that word.

R. G. Genest: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Walker, did you have a question?

I would hope that these questions that we are asking at this point would not be long questions, but just clarify what may have taken place this morning.

Mr. Walker: Mine will be a very short question, Mr. Chairman. Perhaps Mr. Genest to some extent touched on it, but are we correct in saying that the error in maintenance figures submitted by Horizon, either an error within Hydro or an error within Horizon, or both, was not discovered until after the decision was made to award to Canada Square?

Mr. Genest: It wasn't an error.

Mr. Walker: Well I appreciate the word "error" - all right the incorrect assumption - the 1971 as opposed to 1975 rates of maintenance?

Mr. Genest: That was not a factor. As I understand it, it may have been noticed by Mr. Candy some time in October, but it did not enter into the Commission's deliberations. That is my understanding and I think that Mr. Gathercole said that this morning, -----

Mr. Chairman: He indicated that this morning.

Mr. Genest: But I think it may have been passed over -----

Mr. Chairman: It was a gratuitous remark that he made at the end when he said this was discovered at a later date.

That's right,
Mr. Genest: I think I confused it.

Mr. Shibley: Mr. Chairman, perhaps it could be made

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(Mr. Shibley)

am matter for clarification of the record to be put in
these terms, that when Hydro was evaluating the Horizon
proposal it did so ~~on the basis of a maintenance cost~~

Tape H - 164 follows



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PLG

(Mr. Shibley)

~~proposal. It did so~~ on the basis of a ~~mini~~ maintenance costing of \$1.40 per square foot and that that would be the cost to Hydro as at 1975. That was a premise of assessment. Is that correct, Mr. Gathercole?

Mr. Gathercole: That is correct, yes.

Mr. Walker: Is 28 cents the corrected version~~1~~ of the difference between ~~the~~ Horizon?

Mr. ~~Sh~~ Shibley: I think it would be preferable, Mr. Walker, to leave that to be the subject of ~~mini~~ evidence of those who were involved in that who will include, I might say, Mr. Zwigg, of Horizon, and the financial people on Hydro staff.

Mr. Walker: Well, it may well be useful. It is just that it might have been helpful to myself if I had had that in my own analysis of this report of June 23.

Mr. Gathercole: I think, Mr. Chairman, the figure that has been given to me, Mr. Walker, ~~and~~ I believe I did mention the figure of 28 cents, ~~and~~ that is the figure that ~~is~~ stays in my mind. I think it is something in the range ~~between~~ between 20 and 30 cents, but the figure of 28 cents, which I gave before, was the one that was quoted to me.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Just for clarification, has Hydro ever before, in any aspect, gone into a lease-purchase agreement or a ~~lease~~ long-term lease basis with any part of Hydro's ~~operation~~ ^{operation} corporation on a major scale?

Mr. Gathercole: Not ~~that~~ that I have any knowledge of. Certainly not in my time.

Shibley, Mr. ~~W. Newman~~: You are talking buildings, not equipment?
~~Mr. W. Newman: Yes.~~

Mr. W. Newman: Yes.

Mr. Gathercole: We have explored the possibility of some leasing type of arrangements for equipment. So far we have only one or two illustrations of that; I think only one, and that is in connection with railway cars, that is for transportation of coal. That is the only one ~~of~~ of which I have any knowledge.

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Mr. Chairman: Mr. ~~Shibley~~ Allan.

Mr. Allan: Mr. Chairman, I am very concerned about ~~the~~ what has happened so far ~~and~~ ^{construction} evidently considering \$34 per square foot ~~construction~~ cost as a benchmark, and then relating all these other bids to it. Now, I would hope, ~~that~~ Mr. Shibley, that there will be an opportunity to ascertain why this was done and how it was done later on in the evidence. Is that correct?

Mr. Shibley: Mr. Allan, it is my intention to put the issue of ~~prograting~~ to each of the witnesses on behalf of Hydro because I agree with you; I think it is a significant matter of their mode of dealing with it, and in that connection you will have the benefit of the evidence, not only of the financial people, who will include Mr. Mink and Mr. Dean and Mr. Nastich, but also the views of Mr. Sisson and of Mr. Candy. In Mr. Candy's case, I may say, although he is chief architect he is shown by the documents to be very knowledgeable in a variety of areas affecting this project, and all of these people are going to have this question put to them.

Mr. Allan: I think you would feel that there will be a more appropriate time to go into this, then?

Mr. Shibley: Let me say this to you, because of the effect upon the figures attributed to each of the developers, namely ~~the~~ making more competitive, if you like, of the Canada Square figure as it related to some of the others, I think that the Hydro people will be required to demonstrate to the committee the

Tape H 165 follows



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DT

(Mr. Shibley)

~~has reported to the committee the validity of that~~
method of evaluation.

Mr. Allan: Well, then, I ~~was~~ was afraid that ~~maybe~~

Mr. Shibley: ~~I don't think Mr. Gathercole~~ I think

Mr. Gathercole has gone about as far as he can. This is one of the difficulties of putting ~~in~~ the case in chronological sequence. I am doing it in that order so that the ~~committee~~ committee understands what was happening as it happened. ~~and~~ I feel that the ~~the~~ picture presented in that manner is better than the jigsaw type picture obtained if this witness were only asked what he knows about, ~~in~~ Mr. Nastich or ~~if~~ Mr. Sissons is called, and then you are scrambling to unscramble, so to speak, the pieces. But I think it's important - perhaps I should say that now - and I think the committee has demonstrated that it is doing this, that judgement be reserved respecting all these questions until the whole of the evidence is in. If a judge was charging a jury at this juncture, he would say you shouldn't even be ~~maxim~~ making comment, one to the other, about your views or opinions as to the ~~a~~ issues until you have heard the whole of the case.

Now that's not possible in the circumstances of this proceeding but in fairness ~~to the committee~~

Mr. Chairman: It would be desirable but not possible.

Mr. Shibley: That's right. In fairness to everyone affected, I think it's extremely important that until the whole of the case, the whole of the evidence, directed to any one of the factual issues is presented to the committee, that we not reach any conclusions. Now, I have felt obliged on some occasions to alert the committee to the circumstance ~~that~~ ^{that} for example, the proposal advanced by Canada Square as now exhibited, is not what was the ultimate agreement. It was subject to variations emanating from the sort of negotiations that take place before finalizing the agreement, ~~and~~ ^{and} as with all these things, I think that there is going to be enlargement upon, ^{and} variation from ^{and} some of the evidence may differ from what you

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(Mr. Shibley)

have heard. So I am being a little bit expansive on this ~~because~~ but
I think that it is sufficiently important to warrant my making
these observations to you that, even with the benefit of the
review I have made of the whole of the documents received to
date from Hydro, new material keeps coming to me not only from
Hydro but from other sources, etc., and my own thinking on a
lot of matters has been made to change, as a result of new data
presented to me. So, I would urge the committee, all members of
the committee, and I say this while simultaneously acknowledging *that*
and I must say I am very comforted in the very ~~reasoned~~ ^{reasoned} and
cautious approach that all members of the committee have
demonstrated towards the ~~mix~~ evidence to this point in time. ~~when~~

Mr. Renwick: Mr. Chairman, I took Mr. Allan's
remark, and I am not interpreting him ~~to~~ ^{mean} to ~~be~~ something as
follows, that ~~he was asking the question about the method of~~ he wasn't
necessarily asking the question about the method of ~~prograte~~
which is one question which obviously ^{you} have replied, will be
dealt with and which is of concern to all of us, but the
substance, as I took it, of the comment was the remark,
benchmark of \$34 ~~per~~ per square foot

Mr. Shibley: I have a note of it.

Mr. Renwick: Now that seems to me to be a distinct
question. That seems to be a basis on which a judgement was
made that that was the price which was required to provide the
quality and character of building required and I think that
matter is one of extreme importance to my way of thinking.

Mr. Allan: I agree with this.

Mr. Shibley: Well, thank you, Mr. Renwick. It
helps me also because, in addition to the people I have mentioned,
there are people, such as Mr. Witbeck who has to do ^{with} who is going
to sit where and with how many square feet around him and of
course there is the evidence again of Mr. ~~Candy~~ Candy in that
respect who ^{is} ~~was~~ the architect with Hydro. I gather what you
are saying to me is that you are interested in knowing whether
this kind of money needed ~~a~~ necessarily have been spent to get

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(Mr. Shibley)

Hydro building or whether they should have done or could have done with something less.

Mr. Renwick: I don't doubt, Mr. Chairman, without prolonging it, that they could have done with something less.

(H-166 to follow)

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M.T.

H-156-1

(Mr. Renwick)

~~I don't doubt, Mr. Chairman, without prolonging it, that they could have done with something else,~~ But I do agree with the proposition that there is something ~~in~~ called the character and quality of the building required by Hydro, but did it require \$34 a square foot when three of the four proposals which were considered by the commission were \$28 and \$30 a square foot. There seems to be an element of - it comes through in the submission - not of arbitrariness but that ~~that~~ was a basic assumption in the internal thinking of Hydro that that was the figure that was required.

Mr. Shibley: You are also going to hear, Mr. Renwick and Mr. Allan, at least one representative of each of the ~~the~~ other developers who submitted proposals, and I had intended to ask them about the quality of the building that they expected to build when making their submission and whether their dollar figure was a realistic figure in terms of the cost per square foot to provide that quality building. So you will have that, ^{it is} almost expert type evidence, because these are people of expertise.

Mr. Allan: Mr. Chairman, if I might just mention one other word. I'm not anxious to ask the questions. I think that you are in the position to ask the questions and to resolve or to get the answers, ^{and that you} ~~to the few who~~ are anxious to ~~be~~ bring out all the information, but I was pointing this out with the hope that you would realize that some of us are very anxious to have this information brought out.

Mr. Shibley: Thank you Mr. Allan. I have to tell you, it being the first time I have heard you make comment in the course of the hearing, when you started to speak, and having regard for your seniority, you can believe that I was noting every word you said.

Mr. Walker: Did you ever consider politics?

Mr. Renwick: Would that they'd say the same thing about me.

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Mr. Chairman: Wait until you get on in years. I gather in your mind, Mr. Allan, there was a question as to whether or not any more valuable information could be gathered from Mr. Gathercole as to how this amount was arrived at.

Mr. Allan: I don't think there is.

Mr. Gathercole: Mr. Chairman, in the review that would be made I presume it would embrace, as well, a consideration of some of the terms of the agreement. What I mean by that is that if the value of the building is less ~~than~~ than \$34 Ontario Hydro would participate to the extent of three quarters in the benefits thereof. And I assume that would be one of the other elements that might be considered.

Mr. Shibley: Yes, there is both documentary and oral testimony to be given in that respect and I agree with Mr. Gathercole, it's an important element of the arrangement that was ultimately made. That was part of the latter day negotiation, I might say, with Canada Square, and the solicitors who effected that result are also going to be giving testimony.

Mr. Chairman: Well, ^I think that we will proceed, Mr. Shibley.

Mr. Shibley: Thank you. Then the next document I have to produce to you, Mr. Gathercole, is a memorandum for file dated June 29, 1972, ^{filed} Commission Meeting.

Mr. Chairman: That will be exhibit 76

Mr. Shibley: Perhaps you might identify for us who prepared this memorandum, and it appears to be an ^{ex}cerpt having regard for its enumeration as number 3, from some other source. Can you tell me where this originates, please?

Mr. Gathercole: Yes, this is prepared by the secretary of the commission, it is one of his notes of discussion that took place at the meeting.

Tape H-167 follows

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2:35 - 2:40 p m

C.E.

~~(Mr. Gathercole)~~~~that took place at the meeting.~~

Mr. Shibley: This memorandum reads;

"There was general approval given to a proposal that a new head office building be arranged for, but a decision as to the selection of the company which the commission would deal with was deferred until the terms of offer of several other companies had been further reviewed. In the meantime, authority was given to engage James F. McCallum, QC, who would assist commission personnel in negotiating a draft contract with ⁴Canda Square Corporation Limited. This draft contract to give some indication of the basis on which a realistic comparison of the offers made to the commission could be carried out. This would be done for the purpose of ensuring that in the final decision the commission would have the fullest information and an outline of the advantages of whether it should construct the building itself or enter into some form of lease agreement."

Now then, Mr. Gathercole, first of all, is this memorandum an accurate reflection of some of the matters discussed at the commission meeting of June 29?

Mr. Gathercole: I think ~~that~~ it's the notes that were taken by the secretary and ~~which~~ ^{they are} perhaps ~~is~~ a little expansive in the matter of the examination of various proposals. I mean in this sense, that in general it does cover the discussion that had then occurred but it might be just a little more expansive than might have been the actual conversation. That's on the basis of my own recollection.

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C.B.

Mr. Shibley: Now what I would like you to explain

is the observation that instructions⁽⁵⁵⁻¹⁾ had[^] issued to Mr. McCallum to draft a contract with Canada Square while simultaneously instructions^{WERE} issued that the terms of several other companies' offers received[^] further review?

Mr. Gathercole: Mr. McCallum was engaged to assist

the commission in arriving at a conclusion on the Canada Square proposal. At the same time the door was not being closed to consideration of other proposals.

Mr. Shibley: I note the wording, ~~Mr. McCallum was engaged to assist~~

^{"This} ~~Mr. McCallum was engaged to assist~~ draft a contract to give some indication of the basis on which a realistic comparison of the offers made to the commission could be carried out." Were you intending that the draft contract that Mr. McCallum would be working on would be used as an aid to an evaluation of not only Canada Square's proposal but that of other contractors?

Mr. Gathercole: No, not in that sense. The commission

made no decision on June 29, but deferred the matter for further study and consideration.

Mr. Shibley: What do the words "on which a realistic

comparison of the offers made to the commission could be carried out" ~~mean?~~ ^{mean?}

Mr. Gathercole: Well, that they were still under

study.

Mr. Shibley: But they are used in relation to

the drafting of a contract. That is the point I'm driving at.

Mr. Gathercole: Yes, I see.

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2:35 - 2:40 pm

C.B.

Mr. Shibley: Was it a decision of the commission that Mr. McCallum, so to speak, would draft a contract, and as often happens when you are down to the actual writing of an agreement you recognize terms that should be considered as for all of the developers' proposals?

Mr. Gathercole: Yes, that is true. But Mr. McCallum was examining into the Canada Square proposal without however the commission saying, "We are going to adopt the Canada Square proposal." Subsequently meetings were held with Mr. McCallum.

Mr. Shibley: ^{you} I realize now, Mr. ~~Gathercole~~ Gathercole, that short of calling all the members of the commission, I have to try to elicit from you the sense of what was the thinking of the commissioners on the occasion of this meeting.

~~I'm anxious that when you answer these questions~~

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M.S.

Mr. Shibley

and I am anxious, ~~to~~ ~~that~~ when you answer these questions referable to meetings, that you try to communicate to the committee the understanding and thought-processing and so on, of the Commission at large.

Mr. Gathercole: Well, at this meeting there was considerable discussion of the Canada Square proposal, and Mr. Nastich outlined some of the features of the April 10 brief on the various proposals. There was a discussion upon ~~these~~ ^{that} and the Commission decided at that time ~~it should~~ ^{that} shouldn't proceed with any further action until there was additional examination of Canada Square, keeping in mind as well, the other proposals which would be reviewed by the members of our own staff.

Mr. Shibley: Then the next document is another document ^{titled} ~~stated~~ "Advice of Commission Decision," dated June 29, 1972.

Mr. Chairman: Seventy-seven.

Mr. Shibley: This document commences: "A seven-page memorandum dated June 23, 1972, was submitted" -- For identification, I take that to be what is now Exhibit 74 in these proceedings.

Mr. Gathercole: Yes.

Mr. Shibley: And then it simply goes on: "proposing that an agreement be entered into with Canada Square Corporation ~~limited~~ for the construction" and so on. "The memorandum was held for further consideration." I don't think that document needs further comment.

The next document I want -- I should first ask you, Mr. Gathercole, as a result of the decisions taken at that Commission meeting, did instructions issue to your financial people to make further investigation?

Mr. Gathercole: Yes, there were.

Mr. Shibley: And do you know that it was, in fact, undertaken by people such as Mr. Nastich and Mr. Dean?

Mr. Gathercole: Yes.

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~~XXXXXX~~ Mr. Shibley: I am producing to you a memorandum dated June 29, 1972. ~~And~~ this is a memorandum from Mr. Nastich to Mr. Dean. Make that Exhibit ~~←~~

Mr. Chairman: Seventy-eight.

Mr. Shibley: ~~←~~ Seventy-eight. Again, this document appears to reflect certain of the discussion made at the June 29 meeting of the Commission. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And it starts off:

"At today's meeting of the Commission the above subject was discussed at some length. I recognize that one of our staff participated in the economic analysis and I feel that the supporting report jointly prepared with the Commission Architect is excellent.

"I do have, however, the three following basic concerns which, in my view, need to be covered before we can assume that all the necessary groundwork has been done."

Now, just stopping there -- "necessary groundwork" for what?

Mr. Gathercole: Groundwork for reaching a decision on the consummation of an agreement to have a building erected.

Mr. Shibley: All right. ~~(quoting)~~

"1. The validity of the overall transaction from both ~~Hydro and the developer's viewpoint~~ Hydro and the developer's viewpoint. We are not development experts and could easily miss some particular point which would be either costly or embarrassing. For that reason I suggested a legal consultant with expertise in this field. The Commission agreed ~~today~~ and I feel satisfied on this score."

Now, that was what brought about the appointment of


Mr. James McCallum?

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Mr. Gathercole: That is correct.

Mr. Shibley: ~~yes, yes, yes~~

2. The cost relationship between financing and constructing
our building and ~~.....~~
- 

Tape H 169 follows

(Chrmn. - Mr. MacBeth)

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R.E.S.

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(Mr. Shibley)

~~relationship between financing and~~
~~costs of the building~~ and adopting a lease-purchasing
arrangement. I am aware of the difficulties of estimating
our
the cost of/handling the project totally ourselves. ~~However,~~ However,
we should make the best assumptions we can so that some idea
of the cost differences can be considered. Would you please
ask Mr. Mink to work on this with Mr. Candy."

Now, this, I gather, was directed to a continuing analysis of whether you should go it alone, so to speak, and build your own building with your own money, or do a lease-purchase.

Mr. Gathercole: That is what is intended.

Mr. Shibley: So that as late as June 29, 1972, Mr. Nastich was still leaving this an open question for investigation. Is that right?

Mr. Gathercole: Yes, it was

Mr. Shibley: Pardon?

Mr. Gathercole: Yes.

Mr. Shibley: And do I take it that this memorandum reflects ~~on~~ not only his thinking but the ^{INSTRUCTIONS} ~~instructions~~ issued to him at that commission meeting?

Mr. Gathercole: Yes, in part.

Mr. Shibley: "(3) The validity of pro-rating the estimated capital cost of the buildings from the four developers to come to an ~~int~~^{int}ensibly standard comparison on annual costs per square foot."

I'll have to read the next page:

"I do not have the details of the method by which this was done, I think it essential that the process be defensible to attack ~~from~~ ^{by} disappointed developers. Would you ask Mr. Mink to look into this further."

Now, here again, Mr. Gathercole, Mr. Nastich is using terms ~~that~~, as with the terms "ingenious", ~~he~~ is now using the term "ostensibly standard comparison". Was there a

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(Mr. Shibley)

discussion at the time of the commission meeting of June 29, as to whether this ~~procrating~~ was a proper and acceptable method by which to make a comparison?

Mr. Gathercole: My recollection was there~~wa~~ was discussion of that.

Mr. Shibley: It's obviously something that was very much of concern to Mr. Nastich~~and~~ *WMA*

Mr. Gathercole: Yes.

Mr. Shibley: ~~and~~ that ~~it~~ ^{it} was a valid ~~basis~~ *basis*.

Mr. Gathercole: And he was voicing it.

Mr. Shibley: Yes, yes. *WMA*

Mr. Gathercole: He voiced it at the commission meeting.

Mr. Shibley: That's what I want to know.

Mr. Gathercole: Yes, that's *so*.

Mr. Shibley: He did voice it to the members of the commission?

Mr. Gathercole: Yes, yes, he did. Yes, yes.

Mr. Shibley: And I note from this that he seems to be ^{giving} ~~giving~~ instruction or recommendation that this be explored further.

Mr. Gathercole: That is true.

Mr. Shibley: Now, then, he makes the comment that ~~it~~ ^{to} ~~is~~ *is* "the process be defensible ~~from~~ ^{to} attack from disappointed developers".

Was this also raised as a subject for discussion among members of the commission?

Mr. Gathercole: It was discussed from the standpoint of, ~~as~~ if you don't have open tenders and accept the lowest tender that is submitted, is it something that is ~~explaineable~~ *explicable* to the public? That was undoubtedly one of the questions.

Mr. Shibley: Yes. ~~WMA~~ *WMA* was the emphasis in that respect an emphasis as to whether it was a proper basis in terms of getting the best deal for Hydro~~?~~ or was the emphasis

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(Mr. Shibley)

of the discussion related to the processing ^{being} ~~defendable~~
to attack ~~from~~ from disappointed developers?

Mr. Gathercole: Well, I would say ~~that~~ that
the paramount objective was to get the best possible deal
for Ontario Hydro.

Mr. Shibley: Well, did ~~a~~ any member of the
commission take issue with the method of comparison and say,
for ~~extra~~ example, well, these figures have been adjusted
on a basis that I can't accept or I question?

Mr. Gathercole: ^{the} ~~NO~~ they didn't, because it
was explained to us that \$34 was a realistic figure for ^{quality}
building which would be ~~re~~ erected in the period late 1972 to
1975.

Mr. Shibley: In each instance, Mr. Gathercole,
I take it then that the presumption throughout is ^{that} if you don't
spend \$34 per square foot, you are not going to get a ~~good~~
building of the value and quality you wanted, whereas, there
were developers ^{who} ~~that~~ were ^{who} presenting to you that they were
prepared to give you such a building at lower cost.

~~considered...~~

(Tape DH-170 - 1 follows)

H-170-1

~~last paragraph~~
Mr. Gathercole: Yes, that is true, but it was considered that \$34 per square foot was what would be required to get a satisfactory quality of building, in view of the rise in wages and salaries and in building costs.

Mr. Shibley: You didn't consider that you might be sort of getting a bargain from Horizon of a building of equal quality at lesser cost?

Mr. Gathercole: I believe our consideration was, ~~that~~ at this stage at which we were discussing, at June 29th, that we ought to study it and review it more.

Mr. Shibley: All right. Just to complete Mr. Nastich's memo;

"I would like to re-emphasize my general view that a lease purchase arrangement has many more quantitative advantages and likely is the best course of action for Ontario Hydro. I am also aware of the cost savings (\$250,000 per year) which accrue from the centralization of staff, and thus I am eager to proceed as expeditiously as possible."

"However, until the above three factors have been satisfactorily covered, I do not believe we are in a sound position to proceed."

Now is he reflecting the thinking of the members of the commission in that respect?

Mr. Gathercole: He made these observations ~~and~~ and the commission took them into account and deferred any action at that time.

Mr. Shibley: When he says, "until they are covered ~~that~~ ^{I DO NOT} we are in a sound position to proceed", what does he mean by that?

Mr. Gathercole: I believe he means until we have examined into the various techniques that have been employed, and further reviewed the alternative proposals, we should not proceed/

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Mr. Shibley: Then the next document is the memorandum dated July 6, 1972

Mr. Chairman: Exhibit 79.

Mr. Shibley: Which is a memorandum ~~from Mr. Dean to~~ from Mr. Dean ~~and~~ Mr. Nastich in response to the memorandum that I have just referred to. I would just like to run through it with members of the committee quickly. ~~Paragraph 1 points up in response to the memorandum that I have just referred to. I would just like to run through this with members of the committee quickly.~~ Paragraph 1 points up;

"our lack of expertise in this development will be relieved by this appointment,"

referring to the appointment of Mr. McCallum.

ITEM 2 :

"Cost relationship between ownership and lease-purchase:"

He makes reference to the fact that the letter to Mr. Sissons on October 21, 1971, is an attempt to set out the factors influencing that.

On page 2, you will notice in the first full paragraph, about the middle:

"There is, of course, no other way of selecting the degree of cost associated with a preference than a purely judgemental one. As Canada Square has the lowest potential financing cost seen to date, other than a direct Hydro loan, and this does not appear to add significantly to direct borrowing costs, this by itself would not appear to inhibit a lease arrangement."

"The only other factor appearing to be involved is whether, in fact, Canada Square can obtain the rates quoted and what security is required for this financing. This factor must be covered by the lawyers in any arrangement with Canada Square."

And further down:

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(Mr. Shibley)

"As regards maintenance costs," ~~the~~

~~and~~ he makes reference to the fact that their experience is that:

"Our own costs tend to be high because of the high union rates and the additional services performed by our maintenance people. It is quite possible for us to obtain outside services and this be evaluated separately at any time, whether ownership or lease-purchase."

Which I think is the third alternative that was part of the consideration. Is that correct Mr. Gathercole?

Mr. Gathercole: Yes.

Mr. Shibley: Then, on the next page, at the top, ^{2nd SECOND} ~~the~~

line:

"It is not always useful to obtain comparative figures as details of significant factors are rarely known, but on a broad basis the figures

~~can be obtained from the following sources:~~

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(Mr. Shibley)

~~Specialist factors are well known and are based~~
basic ~~the figures~~ quoted between \$28 and \$34 per square foot I would think are not unusual considering the basis on which quotes ~~was~~ were obtained. A rough average of office building ~~xxxxxx~~ cost today ^{is} understood to be about \$32 per square foot."

Then at the last sentence - "the variation of costs arising from this factor are however not as great as can arise from financing cost."

So he's putting the emphasis on financing costs as opposed to cost of construction in the terms of price that you should be paying.

Mr. Gathercole: Yes.

Mr. Shibley: ~~Then the next paragraph.~~ Then the next paragraph.

"The greatest danger arising from building costs and not mentioned above is the possibility of these costs exceeding estimates and possibly ~~is~~ jeopardizing any financial arrangements. This could be most serious, as not only would the cost be higher but the arrangement would have to be re^{fin}anced with unknown cost ramifications. It is thus most important that not only is the builder capable of building at the quoted costs to the specifications, but that he is also financially sound enough to meet any cost over-run.

"As far as I know, no financial statements or credit rating has been obtained from any of those quoting on a project at this time. Although the lender will be also interested in this factor he will ~~probably~~ be most influenced by our lease arrangement, making it again important that the arrangement gives us adequate protection."

Stopping there, Mr. Gathercole, I gather that ^{what's} ~~what's~~ covered here is the situation that, let's say the building were to cost more than \$34 a square foot, that that cost of over-run is at the developer's risk? Is that correct.

Mr. Gathercole: Yes.

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(Mr. Shibley: And that what is of concern here is that whoever is chosen be sufficiently sound financially to be able to fund the cost of that over-run.

Mr. Gathercole: Yes.

Mr. Shibley: And that you should not rely upon the fact of a lending institution extending funds to the developer because any lending institution would primarily be relying upon the lease and the covenants you were making under that lease to pay rent? Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: And in fact, as I understand the financial arrangements referable to this project, almost the whole of the funding for the cost of the building would be by mortgage financing or loan financing. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: So in fact it is Hydro's covenant which was on the line to obtain the funds in question?

Mr. Gathercole: Yes.

Mr. Shibley: All right. Then three;

"Prorating of estimated capital costs: On Page 7 of the commission memorandum the rental rates have been adjusted to allow for ^abuilding costing \$34 per square foot, not for the purpose selection so much as on the assumption that a building having a cost less than \$34 would not meet the quality standards. This is a judgement but it also tends to reflect the differences in rental rates related to financing costs as follows."

And then he gives a schedule following ~~which~~ which is the observation: "The adjusted rates assume profit and other costs remain the same which may not be valid. And certainly the figures should not be used other than to suggest the degree to which the rates are affected by the financing available to the different builders assuming the same building costs."

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"An adjustment of Horizon's original building costs to put the overall quote on a basis more comparable with the other quotes which change the above figure of 482 to 508."

Now I'm going to leave that to have Mr. Nastich and Mr. Dean explain that to members of the committee because I note there is a handwritten note: "I don't understand this fully," and if you want to know what counsel's note is underneath, I put "me either." ~~But I don't understand it.~~ Mr. Genest started to explain it to me over ~~lunch and~~ the luncheon recess and I think we would get an expansion of that later.

"In general it must be assumed ~~that~~ at this stage that the following judgements are correct." I think this next paragraph is of importance. "(a) That it is preferable to finance the building through a lease purchase arrangements than any other alternatives. (There is no possibility of our borrowing at Canada Square's seven per cent rate in Canada and specific mortgage arrangements in ^{27.16 NAME} ~~Canada~~ would be ^{ARRANGEMENTS} complicated by our German borrowing. The difference which financing costs make to any rental rates must be recognized. The Canada Square proposal would look very different at different financing costs.)"

Now again I remind the members of the committee that provision was ultimately made that the risk as to an increase in financing cost was made to be the risk of Canada Square and that is important, so that even though this might ultimately turn out to be a variable ~~from~~ seven per cent.

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(Chairman: Mr. MacBeth)

(Mr. Shibley)

~~might ultimately turn out to be a variable from seven per cent~~
which I believe it will be ^{it} that did not ~~not~~ affect Hydro's obligations as assumed under the contract. Is that correct, Mr. Gathercole?

Mr. Gathercole: That's right, yes.

Mr. Shibley: Then, on the next page, Summary of Positions, this set out certain data. You will notice about mid-page:

"If Canada Square is allowed profits ^{from lower} ~~from more~~ financing, profits that are more questionable are reduced to 45 cents per sq ft. This still appears high relative to risk. Additional profit might be realized if Canada Square were able to build or service at a cost less than estimated."

Now, here again, that comment was a fair comment when made, and, if I may use ~~in~~ the term "triggered" a negotiation and ultimate agreement, ^{did} ~~would~~ it not, Mr. Gathercole?

Mr. Gathercole: Yes.

Mr. Shibley: That if the costs were less, Hydro would share to the extent of three-quarters of that benefit - 75 per cent.

Mr. Gathercole: If the cost of the building was lower than \$34.00 we'd share but, my understanding ^{was} ~~is~~ that if the cost of interest was below ~~six~~ eight, or, in effect, eight and one-third per cent, we would be compensated for that reduction.

Mr. Shibley: Yes, so that, ^{as} ~~I would~~ say, in the ultimate negotiation, Hydro was to share in the lowering of interest cost but not increases?

Mr. Gathercole: Yes, exactly.

Mr. Shibley: Hydro was to share in any lowering of the building ~~not~~ costs but not increases?

Mr. Gathercole: Yes.

Mr. Shibley: That's correct?

Mr. Gathercole: Yes.

Mr. Shibley: So these caveats, or cautions that Mr. Bean was outlining in a very comprehensive memorandum of July 6 did

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found the basis, or form the basis, of further negotiation and amendment of terms of the arrangement ~~between~~ ^{between} say, Hydro and Canada Square.

Mr. Gathercole: That is true, yes.

Mr. Shibley: Now, then, going on; if Ontario Hydro were to go to competitive tender it is possible they might reduce costs ^{(with} ~~which~~ roughly equal financing) by about 30 cents per sq ft. This would be offset by a 18 cents 'delay' costs, ^{and} ~~and~~ We've already covered that in earlier material. Then, as an appendix, an outline of the considerations ^{of} ownership against ~~the~~ lease-purchase and ^{on} ~~an~~ review ^{of major factors} taken ~~is~~ account ~~of~~ in Mr. Sissons' memo of October 21, ^{on} ~~the~~ page two, "Financing Costs."

"If Hydro were to finance the construction and the ultimate building, an estimate of the financing costs, at this stage, would be difficult. Presuming the ~~new~~ building would be completed at some time during the next two or three years, it is difficult to believe the costs would be less than ^{the} eight per cent used in most financial studies and which apply basically. However, it is quite possible the treasury division could arrange, at some time within that ~~the~~ period, sufficient finances specifically to fit the requirements of the building in Germany, Switzerland or Japan at a rate equivalent to the lowest rate obtained by Canada Square, say six and one-half per cent. ^{There} ~~It~~ ¹ ~~would~~ in all probability, be an exchange risk associated with the financing but again probably not greater than associated with Canada Square."

I'll stop in there again, Mr. Gathercole, in the ultimate agreement the risk as to fluctuations in exchange rates is the risk of Hydro, is it not?

Mr. Gathercole: That is true.

Mr. Shibley: That is one of the risks that you agreed to assume in the ultimate negotiations. Is that correct?

Mr. Gathercole: Yes. It could be a benefit. It could be a detriment.

Mr. Shibley: Yes, up or down, there is to be an



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adjustment by formula?

Mr. Gathercole: Yes.

Mr. Shibley: Now then, on page 4, he talks about
profit margins.

"It would certainly appear that the builder-developers have
allowed for normal allowances and profits in their estimates, questioned
on the following basis:

- (a) There is a guaranteed rental income for 100 per cent
occupancy by a triple "A" tenant ensuring no financial
risk beyond an over-run of building costs and financial
arrangements



(Tape H 173 follows)

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~~than risk beyond an owner's ability to~~
~~costs and financial arrangements~~ failing, or being
available only at higher levels.

(b) There is no speculation or financing of the
land to be considered.

(c) There is a possible gain (altho^ugh remote)
from rental of commercial space.

(d) Possible additional cash profit arising from
overestimate of building costs.

If the cost comparisons above are valid and it
is considered the builder/developer does not bear
any ~~more~~ unusual risks at the level of financing
assumed, a lower apparent profit and/or contingency
level should be negotiated under either ownership
or lease-purchase."

Incidentally, Mr. Gathercole, was this memorandum
made available² to Mr. McCallum at the time that he was negotiating
the precise terms of the lease-purchase agreement?

Mr. Gathercole: That I don't know. It went to
Mr. Sissons who had many discussions with Mr. McCallum and ~~there~~ it
was certainly a memorandum that I ~~was~~ discussed with Mr. Gordon
and with Mr. Sissons.

Mr. Shibley: Then the next page, members of the
committee, gives comparative building costs. I am not going to
deal with all of these in detail. I think I will leave that
memorandum at that. I have tried to highlight the approach to
be taken. My only concern ^{in connection with} ~~in that document~~ is that ~~it~~ it be
recognized as a document that was pointing up areas that required
further negotiation on Hydro's part and were, in fact, a subject
of negotiation thereafter. Is that correct, Mr. Gathercole?

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Mr. Gathercole: Yes, it definitely was.

Mr. Shibley: And, in fact, many of the things that he points up in that memorandum resulted in built-in benefits in the ultimate agreement.

Mr. Gathercole: Yes. ~~XII~~

Mr. Shibley: All right. Then, if I may go on, Mr. Chairman, the next document is a memorandum respecting a commission meeting of July 12, 1972.

Mr. Chairman: No. 80?

Mr. W. Newman: Mr. Chairman. I'm sorry--just for a second. On the second last page of this memorandum, Exhibit 79, are these the corrected figures that have to do with that price?

Mr. Chairman: Are those the comparative building costs you are looking at?

Mr. W. Newman: Right. "Effective Cost on Common Building Price." Sorry.

Mr. Genest: That appears on page 4. What you have in mind refers to page 4 of the main memorandum.

Mr. W. Newman: But these are different figures, aren't they?



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Mr. Shibley: Mr. Newman, I think it is clear that this memorandum does not contain any data that points up the fact that Horizon's submission was made on the basis of maintenance costs as at 1971 with escalations.

Mr. ~~Wm.~~ Newman: I'm just talking about the overall differential ~~x~~ in price.

Mr. Shibley: These figures respecting these really are the same prorated cost figures, the only addition to them being the margin, the column styled "Margin" which shows the differences that result once you take them to what they considered a common denominator.

Mr. Gathercole: I think Mr. Dean, Mr. Chairman, is saying in this ~~adjustment~~ ^{adjustment}, adjustment of Horizon's building costs to put the overall quote on a basis more comparable with the ~~the~~ other quotes would change the above figure from 4.82 to 5.08, and I think this arises - Mr. Dean and Mr. Nastich can explain this in more detail and more accurately later, but it does arise from some farming out of the construction to another company.

Mr. Shibley: Exhibit 80, Mr. Gathercole, is a very short note.

"Discussion took place regarding proposed head office. Authority was given by commission to negotiate with Canada Square to work out an arrangement which would be subject to commission approval of financial and other considerations."

Now, was this the meeting at which authority was finally given and a decision taken to enter ~~into~~ into the Canada Square contract?

u
Mr. Gathercole: No, it wasn't until the following, until July 19th.

~~Mr. Shibley: I think that's all.~~

(Tape 174 follows)



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3.10 - 3.15 pm

AA

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~~(Mr. Gathercole)~~

~~July 19th~~

Mr. Shibley: Allright. What is the gist of the decision, then, taken at this meeting?

Mr. Gathercole: Some of these matters were then discussed at this meeting briefly and no action was taken on the agreement.

Mr. Shibley: So the matter was still open?

Mr. Gathercole: It was still open.

Mr. Shibley: And did you as a commission still consider that your options, ^{IN TERMS} ~~of whom~~ of whom you might deal with, were still open?

Mr. Gathercole: Yes.

Mr. Shibley: That really was not decided upon until July 19th?

Mr. Gathercole: Yes.

Mr. Shibley: I now present a memorandum dated July 13, 1972, ^{is} the next exhibit

Mr. Chairman: ~~Number~~ Number 81.

Mr. Shibley: This is a memo from Mr. Candy to the file; ~~the~~ ^{As requested by Mr. McCallum,} the following is a ~~list~~ list of office buildings ~~which~~ constructed in Toronto which could be considered of a comparable quality to that which we envisage for the new head office building."

And then he lists a number of them and you will note,

Mr. Gathercole, among them is the Travelers Insurance Co. University ~~Avenue~~ Avenue and that is a building that was built by Horizon and it was part of Horizon's submission to Hydro that the building it intended for Hydro ^{would} ~~be~~ be of a quality comparable to the Travelers Insurance Co.

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AA

(Mr. Shibley)

Can we therefore take it from this document that when Horizon made its submission on the basis of a building comparable in quality to the Travelers Insurance Co. building, that that met the standards which Hydro had set for itself in terms of quality of buildings?

Mr. Gathercole: That's my conclusion. Not necessarily the design.

Mr. Shibley: I am talking about quality. And bearing in mind that Horizon had offered to build such a building at a cost of, I believe, \$28 per square foot, how do you reconcile that combination of facts with the prorating upwards of all of the proposals to \$34 per square foot?

Mr. Gathercole: One reason would be certainly the escalation of building costs.

Mr. Shibley: But that would be Horizon's risk. If they were prepared to say to you they would build you a building of a quality which met your standards and you said that this quality would meet your standards, and that they were prepared to do it computing their rental rate to you on the basis of a cost of \$28 per square foot, why should it make any difference to you that they were under-~~estimating~~ estimating their costs?

Mr. Gathercole: Well the figures as merged showed a cost per square foot in the form of a rental payment or term payment to be the equal of or, in the light of John ~~Dean's~~ Dean's statement, somewhat higher.

Mr. Shibley: I am sorry, Mr. Gathercole. I am just making double sure that Horizon was quoted at \$28 per square foot.

Mr. Gathercole: I haven't got that figure in mind but I assume that you are correct.

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CHAIRMAN: ~~MACINTOSH~~

~~MR. Shibley:~~

~~ADD 284~~

~~every time I read it and put it to you again.~~ This memorandum, you agree, evidences the fact that when Horizon said they would build you a building equating in quality with the Travelers building that it would thereby meet the standards set for the Hydro head office. Is that correct?

Mr. Gathercole: Yes, that is right.

Mr. Shibley: And that they would do so, computing the rental cost to you on the basis that the building would cost them \$30 per square foot to build?

Mr. Gathercole: ~~MM~~ Yes, but at an interest rate, I believe, which was $8-5/8$ at the time which was translated into a higher rental payment.

Mr. Shibley: That may be ~~big~~

Mr. Renwick: No. No. That was Ellis-Don which was the $8-5/8$.

Mr. Gathercole: What was ~~MM~~ Horizon?

Mr. Genest: Eight and three eighths?

Mr. Gathercole: I thought it was $8-5/8$.

Mr. Deans: Yes. On this sheet it is $8-5/8$, \$26 and $\$28$ ^{1/2} square foot.

Mr. Shibley: Well, Mr. Gathercole, regardless of the interest rate, the interest rate factor was incorporated in the calculation of the \$4.46 per square foot which was the rental rate proposed by ~~MM~~ Horizon, was it not?

Mr. Gathercole: If that was the rate. I mean I am ~~big~~

Mr. Shibley: Yes. I am looking now at the document itself.

Mr. Chairman: What exhibit is that, Mr. Shibley?

Mr. Shibley: Actually, I am looking at the overall ~~summary~~^{summary} submitted to ~~you~~^{you}

Mr. Deans: Is that ~~197~~^{Exhibit}

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Mr. Shibley: I am looking back at exhibit 67, but the same figures are found in a number of exhibits. Yes, exhibit 74 is another one - that's the one that went to the Commission. Perhaps the witness could have that, exhibit, Mr. Chairman.

You see on page 5 of that document, Mr. Gathercole, at the top of the page, there is a schedule of rental rates proposed.

Mr. Gathercole: Yes.

Mr. Shibley: And then the equivalent rate after prorating ~~and~~ dealing with Horizon ~~the~~ suggested that their proposal was that they could build you a building of the Travelers Insurance quality for \$30 a square foot, ~~and~~ incorporating their interest rate factor, the rental rate proposed to you was \$4.46 per ~~square~~ ^{square} foot which, as at the time of the proposals and before prorating, was the very lowest costing submitted to you. Was it not?

Mr. Gathercole: Yes, on the basis of the calculations that we made at that time. But Mr. Dean's analysis indicated that if, under their system of operating, the construction of the building was to be farmed out to someone else ~~and~~ this would give rise to certain additional expenses which would make the rate higher.

Mr. Shibley: I see. Well, then I will come back to that with Mr. Dean.

If I may go on, Mr. Chairman, the next exhibit, 82, will be a letter dated July 17, 1972, from ~~Bank~~ the Bank of Montreal to Mr. Candy. This has to do with the financial worth of Canada ^(Square), confirming that Canada Square were well and favourably known to the Bank since 1957.

"From financial information on file, we know that the Canada Square group of Companies represent substantial worth in equities ~~in~~ and

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revenue-producing real estate. ^{the} East financial
statements indicated a stated worth in excess of
\$25 million. We are ⁱⁿ ~~in~~ ^{once} ~~that~~ recent state-
ments are completed, including in particular
the assets of Phase II - Canada Square, we
believe the stated worth to be considerably
over \$30 million. #

Tape H176 follows

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(Mr. Shibley)

~~Page~~

~~either the assets of the two Canada Square we believe the stated~~
~~worth to be considerably over 30 million.~~ We have been generally
apprised of the proposal between yourself and Canada Square and
the Bank is prepared to give ~~us~~^{its} best consideration to a formal
application when received from the ~~company~~^{PANY} for bridge financing
of approximately 40 million dollars. The group ~~is~~^{the} is well versed
in real estate and development and financing field."

Now Mr. Gathercole, this was I gather, part of the work up material
resulting from Mr. Dean's memorandum saying, "we'd better check
on the financial worth of the various developers." Is that
correct?

Mr. Gathercole: Yes.

Mr. Shibley: And in respect of that endeavour, do I
take it that the only company that was investigated at this late
date was Canada Square?

Mr. Gathercole: As to financing, yes.

Mr. Shibley: And was the reason for that that you
were well on the way to a decision to enter into an agreement with
them? Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: Now when it mentions bridge financing,
that would be financing during the period of construction?

Mr. Gathercole: Yes.

Mr. Shibley: The permanent financing to be otherwise
arranged?

Mr. Gathercole: Yes.

Mr. Shibley: Do you yet have information that
permanent financing has been arranged?

Mr. Gathercole: I haven't seen any documents. I
am told they exist but I haven't seen the documents.

Mr. Shibley: All right. Now the next document is
a memorandum of July 19, 1972, which is the same date as the
meeting of the Commission on that date. It is titled:
"New Head Office building."

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(Mr. Shibley)

Make that Exhibit 83. It sets forth the three major items of concern to the Commission: Capital costs of building, rental cost per square foot, and amount of profit to the developer. It breaks out each of those. The third is of particular interest, I believe, to the committee. This profit will be, this is based on 8 per cent money, profit to the builder will be 45 cents per square foot per year for 30 years. The builder, however, is entitled to a builder's profit on the construction of the building of, say 3 per cent, or one million, & two hundred thousand, which is 9 cents per square foot, leaving a residual profit of 36 cents per square foot, times one million, two hundred or \$432,000 per year. For this profit he takes the following risks: Increase in construction costs due to escalation; higher borrowing rates; inability to increase rent which is fixed for 30 ~~xxx~~ years. This is a break-out or projection if you like, of what Hydro viewed to be the developer's profit ~~xxxxxxxx~~ vis-a-vis this transaction.

Mr. Gathercole: That was Mr. Candy's calculation.

Mr. Shibley: Then the last paragraph on page 2:

"In order to offset any criticism regarding rental rate with respect to costs of ~~xxxxxxxxxxxx~~ constructing the building, the developer has agreed to construct the building at the minimum cost of \$34 per square foot, and if the costs work out to less, the rent will be reduced accordingly, but if the costs exceed \$34, the rent will not be increased."

So by this stage, the negotiations had carried forward to a point where that term had been re-negotiated. Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: Then the top of ~~xxx~~ page 3:

"In the event ~~if~~ the developer borrows ~~xxxx~~ foreign capital, the foreign exchange will be credited to us if it changes in his favour, or will be charged to us if it increases."

Now again, as of this ~~dx~~ date it was settled that foreign exchange

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(Mr. Shibley__

would create a variable in terms of the cost to Hydro. Is that correct?

Mr. Gathercole: Yes. It could work either way.

Mr. Shibley: Yes. The next document is the "Advice of Commission Decision" of July 19, 1972, Exhibit 84.

Mr. Chairman: 84.

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Mr. Shibley: Mr. Gathercole, just for clarification, when a document is styled, "Advice of Commission Decision", what is the procedure that brings about the creation of this type of document?

Mr. Gathercole: It is generally an excerpt from the minutes which is sent to those who would be concerned with this particular matter. Whoever in the commission, that is, in the organization, who would be affected or concerned in any way with that particular subject, receives an "Advice of Commission Decision" so he is aware of the approval that has been given.

Mr. Genest: Mr. Shibley, does your copy have small print at the bottom that says, "Receipt of official 'Advice of Commission Decision' signed by the secretary...".

Mr. Shibley: Yes, thank you. I never believe in reading the small print. Only lawyers do that.

Mr. Genest: I think that explains the question.

Mr. Shibley: Thank you very much. I've been too busy reading the large print. I won't bother members of the committee with any portion of this except ~~to portions~~ that I, sort of, pointed out for my own attention. On page 3, a "After reviewing the history" etcetera, you see the top of the page, "These proposals were submitted by the four companies, all of which were prorated on an equal basis to provide for a building having a capital cost of \$34 per square foot, the original design ~~h~~ being estimated to cost \$29 per square foot as of December 31, 1969. And as the composite construction cost index has increased by approximately 25 per cent since that date, it was considered that \$34 was the minimum cost necessary to provide a building of the quality and type required." And then it goes on ~~h~~ from there so that it's clear, I ~~can~~ gather, Mr. Gathercole, that the commission proceeded on the basis of the validity of that prorating process.

Mr. Gathercole: Yes it did.

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Mr. Shibley: And then -

Mr. Gathercole: And on the advice that had come from

Mr. Dean.

Mr. Shibley: And then at the very end it makes reference to the authority to engage Mr. McCallum to assist members of the staff in drafting this contract, ^{he being} keeping well informed on the requirements of the project. I'm sorry, of projects of this nature and in real estate matters in general.

And the next document, Mr. Chairman, is also dated July 19, being a memorandum to the file from Mr. Candy.

Mr. Chairman: Number 85.

Mr. Shibley: It references a meeting with the commission that morning with Mr. McCallum that ~~he~~ he advised the commission that interim financing up to \$40 million had been arranged from the Bank of Montreal and that "Canada Square now advises that they anticipate all of their long term financing will be obtained from Switzerland." So that was the then information provided as to long term financing, was it Mr. Gathercole?

Mr. Gathercole: Yes it was, we were never certain of that, of ~~whether~~ ~~finan~~ where the financing was to come but-

Mr. Shibley: And then the next paragraph references the variable as to exchange being part of the transaction. And then at the next page top, "It was the feeling of the Commission that we should in some form share in the profit from the commercial area and that the tenants selected by the developer to occupy the commercial area should be satisfactory to Ontario Hydro". This was a new element for negotiation, was it not?

Mr. Gathercole: Yes, it was. We had discussed it a number of times previously and we felt we should participate.

Mr. Shibley: And was Mr. McCallum so instructed?

Mr. Gathercole: Yes.

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Mr. Shibley: And, I am jumping ahead a bit, but is it a fact that under the ultimate arrangement with Canada Square, Hydro does share in the benefits referable to renting ~~the~~ the commercial premises?

Mr. Gathercole: Yes.

Mr. Shibley: And, as I understand the documentation, it's Canada Square which is at risk as to renting the commercial area, is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: But should it realize a rental in excess of \$6 per square foot, Hydro is to share.

Mr. Gathercole: On the lower concourse and the mezzanine, we share to the extent of 50 per cent above \$6, and for the ~~ground level floor, grade level floor, we~~

Tape H-178 follows



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Mr. Gathercole

ground level floor, grade level floor, we ^{would receive payment} ~~will soon pay in the~~ of
\$40,000

Mr. Shibley: Per annum?

Mr. Gathercole: Per annum. That was negotiated
subsequent to ~~it~~ ^{it's}.

Mr. Shibley: Yes, ^{again}, that was ancillary to the

Mr. Gathercole: Yes.

Mr. Shibley: ~~Basic~~ Basic proposal as originally submitted?

Mr. Gathercole: Yes.

Mr. Shibley: Just stopping for ^{the} moment, Mr.

Gathercole, do I take it, because of the evidence you have given
in the last while, that Hydro even as late as late July was still
involved in a negotiating process with Canada Square?

Mr. Gathercole: Yes, right on into the fall.

Mr. Shibley: ^{I see,} And while you were in the course of this
negotiating process, did you attempt to simultaneously carry forward
negotiations with any of the other ~~dxs~~ developers?

MR. Gathercole: Not that I am aware of.

Mr. Shibley: So that we can take it that as of July,
1972, you had made your selection of the developer - is that
correct?

Mr. Gathercole: That is true.

Mr. Shibley: And the only thing remaining was that
an agreement was subject to reaching acceptable terms, a formal
agreement?

Mr. Gathercole: Yes, ~~XXXXXXXXXXXXXXXXXXXX~~

Mr. Shibley: That is correct ~~and~~ ^{and} now you are down
to getting the detail and the best individual terms settled?

Mr. Gathercole: That is true.

Mr. Shibley: Then the next document is a memorandum
of July 31, 1972.

Mr. Chairman: Number 86.

Mr. Shibley: This is a memo from Sissons to Candy.

The minutes of July 19 make it clear that approval of this

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Mr. Shibley

agreement is subject to a final review of all ~~the~~ terms.³ Now, do I take it therefore that as ~~at~~^{at} July 31, the commission was still reserving judgement as to an agreement?

Mr. Gathercole: That is true.

Mr. Shibley: All right. Then the last sentence:

"The memoranda itself and the present minute did not deal specifically with the question of exchange rate,,the conclusion reached that there was no way in which the developer could be expected to carry the exchange risk, nor indeed would this be expected under either type of commission contract," So that you were accepting as of that time, or Mr. Sissons seemed to be accepting, that the exchange risk had to be at Hydro's risk?

Mr. Gathercole: Yes.

Mr. Shibley: All right.

Mr. Chairman: It is 3.30. Mr. Walker reminds

me we should take a break, so we adjourn until 20 to 4.

(H-179 to follow)

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M.F.

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Chairman: Mr. MacBeth

Mr. Chairman: How are you bearing up, Mr. Gathercole?

Mr. Gathercole: Oh just fine, just fine.

Mr. Chairman: Well we are back in session.

Mr. Shibley: Perhaps while we are waiting, Mr.

Chairman, I would like to record how impressed I am with the efforts of your Hansard people. We have a transcript in hand this afternoon of this morning's proceedings and that has got to be something of a record-breaking effort. I am very grateful to them.

Mr. Chairman: Well, coming from the courts you would take that as somewhat of an exception, but we get kind of used to it around here.

Mr. Allan: Mr. Shibley, you should remember that the House didn't sit today so you could get that.

Mr. Shibley: I see. It takes quite a bit, does it?

Mr. Chairman: Oh they do a good job for us. Well we are back formally, we have a quorum.

Mr. Shibley: Thank you, MR. Chairman, the next document I want to tender is a letter dated August 8th, 1972. Now this letter contained enclosures that I personally do not feel need to be made part of the exhibit. It is the material referable to exchanges with the city of Toronto as to zoning and coverage, and so on. It is like a sorcerer's apprentice; the material is reproduced nevertheless and it is available to the members. I suggest that the only part of that material which be made an exhibit is the letter itself, it being a letter from Mr. Candy to Mr. Moog enclosing a copy of all pertinent correspondence in connection with the rezoning of the site for the above building, and permitting a gross floor area of 1,256,000 square feet, based on a density transfer from those redesignated lands south of Orde Street and west of Murray Street, enclosing a height limit of 16 stories, for

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(Mr. Shibley)

an overall height not exceeding 250 feet.'

Mr. Chairman: Well I believe you have distributed everything to us have you not?

Mr. Shibley: Yes, you have everything. Now whether you want the whole of that material made part of the exhibit ----

Mr. Chairman: Is there any reason why it shouldn't be?

Mr. Shibley: Well all right, let's put it all in, it is ready and you have got it.

Mr. Allan: It doesn't fit in my book.

Mr. Shibley: Well that is one reason why I was thinking of not including it, Mr. Allan, but you have it.

Mr. Chairman: Before I admit it at this point there was no reason for any confidentiality in respect to the zoning by-laws or anything else?

Mr. Shibley: Not at all.

Mr. Chairman: Oh well I think it is easier to put it all in.

Mr. Shibley: Thank you.

Mr. Chairman: That is exhibit 87.

Mr. Walker: Just the face of the letter?
of the

Mr. Shibley: Well the whole material the Chairman has directed be made an exhibit. It may be for purposes of your ~~brief~~ brief if you want to -----

Mr. Chairman: Rather than try to exclude something, somebody might become suspicious and think we were trying to do it on purpose.

Mr. Walker: Oh no, Mr. Chairman.

Mr. Shibley: The next document is a copy of a news release dated August 25th, 1972. I believe this is already an exhibit but my copy has a handwritten note at the upper left corner and that is the copy I want made available to the witness please.

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Mr. Chairman: This will be exhibit 88, the one with the ~~handwritten~~ handwritten notation.

Mr. Shibley: The members of the committee have seen this news release. The only significance of this copy is that in the upper left corner ~~it is indicated a copy of it was delivered to the Hon. A. B. R. Lawrence.~~

Tape H - 180 follows

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(Mr. Shibley)

it is indicated that a copy of it was delivered to the Hon. A.B.R. Lawrence and the Hon. J.A.C. Auld, I'm not sure whose initials those are. Do you know who initialled that?

Mr. Gathercole: Those would be my executive assistant.

Mr. Shibley: So that, in fact, the copy of this release was provided to each of those ministers on that date.

Is that correct?

Mr. Gathercole: Yes.

Mr. Shibley: The next exhibit is a memo dated September 21, 1972. Actually it's a letter from Mr. Candy to Mr. McCallum of Harries, Houser. That would be Exhibit ~~numbered~~

Mr. Chairman: Eighty-nine.

Mr. Shibley: And we are only interested in the first paragraph of that letter:

"The Developer has examined your draft of the above agreement and appears to be quite concerned about one particular item, which is the designation of the consulting architects to compile the cost of the building upon completion. He appears to be concerned that the obtaining of this information strictly by a bookkeeping operation would not present the true facts favourable to both parties."

Now, I gather, Mr. Gathercole, that this relates to the obligation to evaluate the building when it was completed and should it be valued at less than \$34 per square foot you were to receive a reduction in rental cost to you?

Mr. Gathercole: That is true.

Mr. Shibley: And then it goes on to talk about various elements entering into that costing, that I don't want to dwell on at this point.

~~Mr. Shibley:~~ The next document is one dated September 27, 1972, a memorandum from Mr. Sissons to Mr. John Ross -- I'm

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(Mr. Shibley)

WE'LL JUST
sorry, it's a memo of Mr. Sissons, ~~let's~~ leave it at that --
dated September 27, 1972, Exhibit ~~document~~

Mr. Chairman: Ninety.

Mr. Shibley: And it starts:

" As discussed, attached is the news release concerning the new head office building. The basic reasons for approaching the market selectively are well known to developers. Apart from impracticality of approaching the whole industry by open tender, they include -- "

And then he lists them. I'm not ~~sure~~ sure of the purpose of this memorandum, Mr. Gathercole. Can you enlighten me as to that?

Mr. Gathercole: I think there was a letter from Mr. John Ross to Mr. Sissons and he is responding to it.

Mr. Shibley: I see. I don't have Mr. Ross' -- oh, I'm sorry.

Mr. Genest: Now that the committee has got this in front of them, ^{MR. SHIBLEY} could I help them?

Mr. Shibley: Yes, if you would, Mr. Genest.

Mr. Genest: I am told that Mr. Ross had made an approach on behalf of Olympia and York.

Mr. Shibley: I remember now, that's right.

Mr. Genest: And that this was a response to him.

Mr. Shibley: That was a very belated approach in June of 1972.

Mr. Genest: Yes and that records that we weren't interested with Olympia and York because of difficulties we were having.

Mr. Shibley: Yes. I think it's in everyone's interest, I don't think it's relevant to get into that.

Now, then, the next document is a document dated October

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(Mr. Shibley)

2, 1973, which is a memorandum from Mr. Gordon to Mr. Gathercole.

Mr. Chairman: Ninety-one.

Mr. Shibley: Mr. Gathercole, I would like you to read this memorandum, it's a short one. It says:

"Following Roger Seguin's comments at a recent Commission Meeting I suggested to Henry Sissons that we should prepare a brief, effective statement on the rationale for Ontario Hydro's action with respect to the construction of its new office building. The idea was that we should only use this if the new building became an issue in the newspapers.

Attached is our draft statement. Perhaps you would like to consider it and then we could finalize it, including modifications you wish to make."

~~Now, Mr. Gathercole, let me ask you whether you wish to~~

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C.B.

(Mr. Shibley)

Let me start by asking you, when was the commission meeting which is referenced in this memorandum?

Mr. Gathercole: I believe it was in the early part of September, ~~and~~ ^{At} the commission meeting Mr. Seguin referred to a letter he had received ^{from} a contractor expressing some unhappiness that he hadn't been given more consideration in the matter of his proposal to Ontario Hydro for erecting ~~the~~ Hydro's administration building.

Mr. Shibley: Was that raised by Mr. Seguin during the course of the meeting?

Mr. Gathercole: Yes, it was.

Mr. Shibley: And was the topic recorded in any minute of any such meeting?

Mr. Gathercole: Not as far as I'm aware it wasn't. I have no ~~copy~~.

Mr. Shibley: I must tell you I have not received an excerpt from your minutes which reflect that.

Mr. GEnest: Mr. Shibley, I have searched them and there is no record.

Mr. Shibley: Thank you.

Mr. Gathercole: It was something of an aside, we were at this time ^{on the} subject of the head office building and the negotiation of the contract with Canada Square had come up. ~~and~~ Mr. Seguin said that he had received this ^{letter} ~~note~~ indicating some protest and that he thought we ought to be very clear as to the calculations and the facts with respect to the arrangements with Canada Square to make sure that we were arriving at a businesslike arrangement.

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Mr. Shibley: And you say he told you of a letter he had received from a contractor. Did he tell you which contractor that was?

Mr. Gathercole: No, he didn't.

Mr. Shibley: Did he produce that letter to you?

Mr. Gathercole: No. Subsequently, ^{before} ~~when~~ we were proceeding to lunch, we had some outside the commission meeting, he did ~~raise~~ raise the subject again and simply repeated the remarks that he had made at the commission meeting but didn't disclose who the contractor was, or the letter, which was marked "confidential". This is Mr. Gordon's response to the subject being raised *at the meeting.*

Mr. Shibley: Now, you earlier in your testimony made some reference to Mr. Seguin, and I'm wondering whether your memory of the exchange with Mr. Seguin today is anything different than what it has been in the past, in the course of your giving testimony ^{before} ~~at~~ this committee?

Mr. Gathercole: I've checked with all the commissioners and the secretary and the general manager. ~~All~~ All of them say, that subject was not raised at the commission meeting. One of the commissioners only, Colonel Kennedy, who has since retired from the commission, mentioned that at some time much later he had thought that someone had said something about the relationship of Mr. Moog to the Premier.

Mr. Shibley: Yes, so ~~in that~~ that in respect to the undertaking you gave to this committee you have made that check?

Mr. Gathercole: Yes, I have.

Mr. Shibley: And the only commissioner that has any memory, you say, of any comment is Colonel Kennedy?

~~Mr. Gathercole: Yes. He was quite young at the time.~~

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~~(Mr. Shibley)~~

~~Mr. Kennedy~~

Mr. Gathercole: Yes ~~yes~~ He was quite vague about it and he couldn't recall who had made the observation but he said that he did clearly recollect that it was well on into ~~the~~ after the consummation of the agreement.

Mr. Shibley: So that would be subsequent to -- when you said a ~~constatation~~ ^{MY} would that be a comment made after the agreement was executed or after the decision of the commission to make the agreement?

Mr. Gathercole: It would be, I would think, in November or thereabouts - October or November.

Mr. Genest: Mr. Shibley, I have a statement from Colonel Kennedy that I obtained after ^(hearing the) discussion by Mr. Gathercole. Would it be of any help if this was read or filed?

Mr. Shibley: It's up to you. I think so.

Mr. Genest: The statement reads: "I have been asked by the Chairman ^(as to) ~~of~~ my recollection of ~~the~~ ^{the} ~~statement~~ ^{that} mention of a statement ~~that~~ Moog was a friend of the Premier. I have ~~no recollection~~ ^{no recollection} of that statement being mentioned in my presence. I do not know if this was at a commission meeting or during conversation. My best recollection is that the statement was made sometime after the contract with Canada Square was signed. I do not recollect who made the statement or where it was made".

Mr. Shibley: Is that a signed ~~statement~~ ^{statement}?

Mr. Genest: That is signed by Colonel Kennedy.

Mr. Shibley: Perhaps we should make that the next exhibit, please.

Members of the committee, I am not intending to call all members of the Hydro Commission, obviously, but should it become necessary, we might consider calling some of them.

Mr. Genest: May ~~me~~ I have this reproduced then for members of the committee and perhaps they could save a place ~~any~~

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Mr. Chairman: Yes, we will do it. I'll mark it now as No. 92, a signed statement by Colonel Kennedy, a commissioner.

Is there a date on that statement?

Mr. Genest: May 24, 1973.

Mr. Renwick: Mr. Chairman, could I ask Mr. Gathercole whether these comments of Roger Seguin ~~are~~ which Mr. Gathercole recalls included any reference to Mr. Moog or the Premier or any friendship between them?

Mr. Gathercole: No, Mr. Seguin is very emphatic that there was no reference to those individuals or to Canada Square, and that he was simply raising the question that he had received this letter and that indicated unhappiness from one of the contractors, and that ~~we~~ be clear and sure of the basis upon which we were entering into this.

Mr. Renwick: Mr. Gathercole, did Mr. Seguin indicate the basis of the unhappiness of the contractor?

Mr. Gathercole: I believe he ~~was~~

Mr. Genest: I've obtained the letter from the contractor.

Mr. Shibley: I was just going to get to that.

Mr. Genest: I've obtained a letter from Mr. Seguin.

Mr. Renwick: Then let me ask another question, of all of the commissioners, you and Colonel Kennedy are the only ones that recall the question of the relationship between the Premier and Mr. Moog having ever been discussed. Is that correct? Or commented upon or raised or mentioned?

Mr. Gathercole: That is so. And as I say, ^{highly} Colonel Kennedy and myself it's just sort of a vague recollection that at sometime later, ~~and~~ it may have emerged out of the newspaper reports about it, ~~that~~ someone had mentioned this. Now it's just that type of what I might call nebulous ~~recollection~~ recollection.

Mr. Renwick: Mr. Gathercole, you do recall it at a commission meeting as Colonel Kennedy recalls it?

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Mr. Gathercole: No, I don't recall it at a commission meeting. I just have a vague recollection that some way along the ~~line~~^{line}, and as I say it may have stemmed out of some of the discussion later, ~~that~~ someone had mentioned this but who it was I don't recall ~~and~~^{As} far as I am aware anyway from the ~~statement~~ statement of Colonel Kennedy, and he so advised me, he can't recall who ~~said~~^{said} it so the only thing I can conclude is that it came ~~out~~^{it} emerged out of the controversy that ensued ~~some months~~^{since} later.

Mr. Renwick: Mr. Gathercole, when you ~~-----~~

Mr. Genest: Mr. Renwick, excuse me. I'm sorry to interrupt but Colonel Kennedy's statement does not say it was ~~a statement~~ made at a commission meeting. He does not ~~recall whether~~^{whether} it was made at a commission meeting or ~~in~~ in a conversation.

~~Mr. B.~~



H-183 to follow

H-183 - 1

(Mr. Genest)

... reads, "As to use ~~and in conversation.~~"

Mr. Renwick: Thank you, Mr. Genest.

Mr. Gathercole, when you made the first comment about the relationship between Mr. Moog and the Premier, you indicated that you ~~thought~~ thought it was Roger Seguin who had made the comment, and now we have ^a specific comment of Roger Seguin. Could that have been the reason why you indicated earlier in your evidence that there was some comment made by Roger Seguin which ~~is~~ you have now withdrawn, of course?

Mr. Gathercole: I knew that Roger Seguin had raised some question about it as to whether there might be some criticism, and it may be I linked in my own mind, unjustifiably; ~~to the office~~ a lot of time has followed, you know, since the execution of the agreement, the ^{discussions} ~~discretions~~ and the newspapers, and so on, and it may well be that I linked these two events together, because Mr. Seguin emphatically declares to me that he had not known anything about the relationship of ^{Canada} Square, didn't know who they were, or of the president of that company, with the ² ~~first~~ Premier.

~~Mr.~~ Mr. Renwick: Mr. Chairman, I assume that they are going to call Mr. Roger Seguin.

Mr. Shibley: Yes, we are. That's right.
I might say also, the reason why I introduced this topic at this time was that I felt there might be some connection between the complaints that had been recorded with Mr. Seguin by a contractor which he, in turn, passed onto the commission, and ~~your~~ ^{your} ~~was~~ ^{FACT} what appears to be, ~~fully~~ ^{FACT} recollection of who ~~is~~ was and what was the occasion of your past evidence, preferable to the relationship between the Premier and Mr. Moog.
Is that correct?

Mr. Gathercole: I have given my recollection of it.

Mr. Shibley: Now, members of the committee, as Mr. Genest has indicated, we've ~~just~~ tracked this down a little more precisely. When I was advised of what, in fact, Mr.

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(Mr. Shibley)

Seguin had to say about his involvement, in terms of what he's presented to this commission, namely ~~the~~ the complaint of a contractor. I then ~~asked~~ asked to have the letter which that contractor had sent to Mr. Seguin be reproduced and sent to me and I ~~have~~ am now in possession of a copy of it. My preference ^{WOULD BE} to wait upon the calling of ~~the~~ the person who wrote that letter so as to introduce it at that time, so that we can fairly deal with its contents by the person who drew it. It makes a lot of statements that I feel would be unfairly dealt with if it were introduced at this juncture. So, with your permission I would like to defer the introduction of that letter at this time with assurances to the committee that it will be exhibited and gone into in depth when the time comes.

Mr. Chairman: Is that agreed?

Mr. Shibley: Thank you.

Now, as a result of the complaints of one contractor, I take it that it was decided to, as this memorandum indicates, create a brief effective statement on the rationale for Hydro's action. Is that correct?

Mr. Gathercole: That's what it says.

Mr. Shibley: ~~Yes, that's correct.~~

(Tape H-184 - 1 follows)

H-184-1

~~(Mr. Sibley)~~

~~is that correct?~~

~~Mr. Gathercole: That's what it says.~~

Yes

To

To you

Mr. Sibley: The next document I want produced ~~is~~ is a document called: "Rationale for course followed in selection of Developer" dated October 2, 1972. And to avoid duplication would ~~be~~

Mr. Chairman: Q3 is the number of it.

Mr. Sibley: My understanding, Mr. Gathercole, is that this was prepared by Mr. Sissons, is that correct?

Mr. Gathercole: It was sent to my by Mr. Gordon.

Mr. Sibley: But his initials are at the end of it, HJS. Is that correct?

Mr. Gathercole: It was prepared by Mr. Sissons, or by someone else, ~~maybe~~ Mr. Gordon is the only person I know, he sent it to me for consideration.

Mr. Sibley: Then you received a copy, ~~and~~ did you review it?

Mr. Gathercole: No I didn't. ^{Probably.} I read it over at the time, but no action was taken on it.

Mr. Sibley: I'm sorry I don't have additional copies of this next document. It is the same document with annotations on it. I would like you to look at it at this time. And just for the moment, can you tell me, are those notations and suggested amendments made by you or were they made by someone else?

Mr. Gathercole: They were made by someone else.

Mr. Sibley: All right. Well then we won't tender that as an exhibit at this time.

Mr. Chairman: ~~Do you know who made them?~~ Do you know who made them?

Mr. Sibley: No, I don't. Do you know who made them?

Mr. Genest: I can assist. I am told that these are changes suggested by Mr. Preston of the ~~public relations department~~ finance department of Hydro.

Mr. Gathercole: Statistical department.

Mr. Sibley: Statistical? The next document I want to produce is a memorandum dated October 11, 1972, which appears to,

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(Mr. Shibley)

be an excerpt of minutes of the commission, in that it starts with the numeral 2.

MR. Chairman: Exhibit No. 94.

Mr. Shibley: IT STARTS BY REFERRING TO THE fact:

"The Commission Architect and Mr. James McCallum attended the meeting at this point to give the Commission information on certain arrangements that have been made to date concerning the

contract with Canada Square¹ building

Discussion of ^A temporary office² for the Bank of Montreal.

The third paragraph:

"Mr. Candy also reported that from working with the Canada Square Corporation to date his confidence was reinforced that the company and the Commission ²would be able to work together harmoniously."

Now just stopping there. Is this a minute of proceedings at a meeting of the commission?

Mr. Gathercole: My belief is this is a note which was made by the secretary of the commission.

Mr. Shibley: Mr. Easson? Then on the next page, about a third of the way down, reference is also made to the financing.

"It appears that the company" —
that would be Canada Square —

"Is borrowing funds in the United States from the Equitable Life Insurance Company. One of the items referred to was that the maintenance costs of the building would be paid in Canadian funds."

H-185-1 follows

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fvk

(Mr. Shibley)

... one of the items referred to at that the maintenance costs of the building would be paid in Canadian funds. Mr. McCallum explained the rates that would be paid per sq ft for maintenance purposes and the efforts being taken to make sure that all these rates are justified and that the contractor ^{is} not moving into ^{where} a position ~~that~~ excessive profits could accrue to him over a period of time from this section of the contract. ^{like} ~~the~~ matter of the exchange rate and where it might apply such as in relation to the country in which the contractor's financing ⁿ ~~arrangements~~ are made has not been fully decided upon although, in earlier discussions, it was agreed that there was no way in which the developer could be expected to carry the ~~ex~~ exchange risk.")

I don't think it needs further comment. That indicates the state of affairs on that date.

The next document is a letter on the ~~E~~ letterhead of Harries, Houser. It was executed by Mr. Houser of that firm, I believe, to Mr. Nastich dated October 16, 1972.

Mr. Chairman: Exhibit 95.

Mr. Shibley: This letter has attached to ~~the~~ it a schedule showing Calculation of Fluctuations in Exchange Rates as prepared by Canada Square, and the impact on the net cost to Hydro should there be a fluctuation in that respect. Is that correct, Mr. Gathercole?

Mr. Gathercole: Yes, sir.

Mr. Shibley: Members of the committee, I wish to alert you to ~~the~~ ^{is} circumstance that ~~is~~ ^{is} part of the agreement which was exhibited as ~~Exhibit~~ ^{is} number one or two; two, I believe. There are a series of letter agreements, five in number, which are supplementary to the main contract. These are letter agreements dealing with individual matters that were the subject of negotiation ~~in~~ ^{and} agreement. Now, all of these letter agreements are dated as of October 18, 1972, ^{although} ~~although~~ I believe I'm correct in my conclusion. I'd ask for commission counsel, Mr. McCallum, to confirm this, that some of the agreements, in fact, were made within ~~the~~ ^a few weeks

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(Mr. Shibley)

subsequent to that date but all of the letter agreements were given that date.

Mr. McCallum: Yes, I believe that is correct.

Mr. Shibley: Yes. It's already ^{an} ~~in~~ exhibit. I'm not going to put it in again as an ~~exhibit~~ exhibit but I'll alert the committee also to the fact that by letter agreement of ~~22nd~~ October 18, 1972, one provision was made under paragraph "A".

"Notwithstanding the provisions of section 32 of the agreement, the rental rate of \$4.84 payable by Ontario Hydro to Canada Square under the building lease shall be reduced in accordance with the following ~~form~~ formula and such reduction shall also apply to all rent paid by Hydro prior to commencement of the term of the building lease."

Then there is a formula provided which works out ^{as} ~~as~~ 75 over 100 times the amount by which the appraised value ^{as} ~~is~~ established ~~is~~ above) is less than \$44,400,000, over \$44,400,000, times \$4.84, equals the reduction. This is the formula. You will find it in one of the letter agreements whereby, if the building costs less than \$44,400,000, three-quarters of the saving was to be established as ^a ~~a~~ factor against that ³ ~~projected~~ price and applied towards the rental rate of \$4.84 to establish the reduction amount.

Mr. Deans: Are we getting that?

Mr. Shibley: You have it already as part of ~~an~~ exhibit 2. That's the bound volume containing —

Mr. Renwick: Oh, pardon me. Right. Thank you.

Mr. Shibley: → the agreement and all of the letter agreements that I have made reference to.

(Tape H-186 follows)

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AA

(Mr. Shibley)

and ~~all of the letter agreements that I have made reference~~
to.

Mr. Deans: Where is it?

Mr. Shibley: I think it is towards the rear ~~of~~ of
the brown volume.

~~Mr. Shibley~~: I know it's buried in here, but I think
it is an appendix to this building lease. Mr. ~~McCallum~~ McCallum,
can you help us?

Mr. ~~Mc~~ McCallum: It is in ~~the~~ the back of that
brown volume.

Mr. Shibley: Are they all at the back?

Mr. Genest: All the letters should be at the
back, Mr. Shipley.

Mr. Shibley: I thought they were also, but I
don't find them in this particular volume. There are certain
of them there, but not all of them.

Mr. Shibley:
Mr. McCallum: ~~They should be~~ There were some
volumes significant that had two of the letter agreements
missing from them and I think they were the ones reproduced
by Hydro who have them and maybe that's why you can't find
them in that volume.

Mr. Shibley: Thank you. That is what happened.
May I borrow yours. I was working to a deficient volume.
You'll see a series of letter agreements. The first is
October 18, not to be confused with the one I was dealing
with, another one October 30 and a third one October 18
and it's that document found at the rear of the brown
volume, to which I ^{have} made reference. Have we all located
our copy?

Mr. Renwick: It wasn't in my volume. Presumably

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AA

(Mr. Renwick)

there is another letter as well missing. Is that right -
~~there~~ ^(four) ~~are~~ ~~not~~ all together.

Mr. Shibley: There are five.

Mr. Renwick: Five altogether. I now have three.

Mr. Shibley: ~~And~~ Perhaps ...

Mr. Chairman: I likewise have one of the imperfect
copies. I have got one, two - I have just apparently have
two letters in here.

Mr. Deans: No that's all I have. I have got
~~???~~
two.

Mr. Chairman: I think what we will do if our
original exhibit number two has these in and I only have
a copy here, that we will let the original exhibit stand
and bring the others up to date so that we won't mark these
as exhibits now.

Mr. Shibley: For the moment, I think it will ~~be~~ suffice
if I simply ask that all members of the committee have
their exhibits ^{TWO} ~~made~~ ²² perfect by the inclusion of these and
that you be alert to the circumstance that much of what this
witness has outlined to you by way of ~~discussed~~ negotiated
amendments to the contract ^{is} ~~are~~ to be found in those letter
agreements, and I don't think I need to go further with this
~~the~~ witness in that respect.

Mr. Chairman: I would ask Mr. Moore if he would
work with Mr. Bell to see if he can get the missing documents
and give them to the members of the committee.

Mr. Shibley: ^{The next} ~~the~~ documents, which I think the committee
will find very helpful in understanding the lease purchase
agreement, is an opinion type letter of Harries, Houser
reporting on the transaction dated October 25, 1972.

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4.25 - 4.30 pm

H 186 - 3

AA

(Mr. Deans)

Mr. Deans: Could I ask one question of the counsel?

At some point are you going to show where they arrived
at the \$44, 400, 000? I was under the impression we were
~~working with a figure of something~~

H 187 - 1 follows

4.30-4.35pm 天无云 微风 晴
B.A.

Gathercole.

\$34.00 ~~xxx~~ multiplied by the gross area, ~~41,586,289 Gals.~~

is to the extreme outside limits of the building, not to be confused with the net, rentable or usable area.

Mr. Chairman: This next exhibit is

Mr. Shibley: Members of the committee, this is an important document in the sense of assisting you in an understanding of the basic arrangements that was made, and I would like to go through it with you fairly carefully. I will read it for everyone's benefit.

"In accordance with your instructions, documents have been prepared to effect the construction of Ontario Hydro's new head office and the subsequent leasing of a major part of the building to Ontario Hydro for a term of 30 years, at the end of which period Ontario Hydro would become the owners of the building and other improvements on the site free and clear of all encumbrance.

The method which has been agreed upon with Canada Square for the handling of the transaction provides the following:

(a) A Ground Lease of the site at the south-west corner of University Avenue and College Street, which site contains 2.41 acres, by Hydro to Canada Square for a term of 50 years at a rental of \$1.00 per annum, and which Lease is capable of being terminated at the end of 30 years upon certain terms and conditions. An

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B.A.

(Mr. Shibley)

explanation as to the original term being 50 years is contained later in this report."

~~(b) The lease is for a term of 50 years.~~

So the land is being leased from Hydro, as a first step, ~~to~~ to Canada Square.

"(b) A Net Lease to be entered into when the building is completed whereby Canada Square leases to Hydro the lands and building for a term of 30 years at a rental of \$3.35 U.S. per square foot and Hydro undertakes to do all the things that a tenant normally would do under what is normally called a carefree lease. The rental rate under this Lease will be dealt with further in this report when dealing with the actual document. It is the intention that this lease will be registered on the title to the property immediately following the Ground Lease and in priority to any permanent charge to be placed against the property by Canada Square. ~~Second~~

I should tell you that the effect of that is that ~~regardless of~~, Hydro could not be foreclosed out of this leasehold interest by reason of the order of registration that is contemplated.

"The effect of this order of registration will be that, as long as Ontario Hydro pays the net rent and performs the other obligations under the Net Lease, their occupancy of the premises cannot be disturbed.

"(c) A Lease Back whereby Ontario Hydro leases to Canada Square the site and the building for a period of one day less than the term of the Net Lease and the annual rental per square foot payable under this lease is the same dollar figure as in the Net Lease, except that under the Lease Back it is payable in

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B.A.

(Mr. Shibley)

Canadian funds. In addition, Canada Square, under the Lease Back assumes those obligations included in the Net Lease which were intended to be part of Canada Square's obligations in the Building Lease. A discussion of the risk of exchange fluctuations is set out later in this report.

"(d) Building Lease. This is the document under which Ontario Hydro will occupy the premises once they are completed and sets out the obligations of Canada Square and Ontario Hydro during the 30-year term of the lease.

"(e) Construction Agreement. The arrangement between Hydro and Canada Square is set out in an Agreement referred to as the Construction Agreement and the documents ^{above} referred to are attached as Schedules to the Agreement so that the form of them is settled and they can be completed by the insertion of proper dates and amounts at the appropriate time."

We feel that it would be appropriate to set out some of the obligations assumed by both Hydro and Canada Square in respect of the documents:

(Tape H-188 follows)

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4:35-4:40 pm

V.H.

(Mr. Shibley)

I would like to set out some of the obligations assumed
by Hydro and Canada Square in respect of the documents.

" Building Agreement. This agreement requires

Hydro to enter into the ground lease within 60 days after

execution. It requires Canada Square to prepare all
specifications, construction of the
necessary drawings and ~~spec~~ for the building in accor-
dance with preliminary plans and ~~spec~~ ^{specifications}. The plans are

16 in number, ~~and~~ ^{and} will be initialled by the parties ^{and} there
is an outline ~~spec~~ ^{specification} together with room schedules and allow-

ances which will also be initialled by the parties, and

we are informed by the ^{commission} architect ^{Mr Kenneth Condon} that he has approved the
drawings and outline specifications. Provision is made

in the agreement for changes to be made where required

by ^{Ontario} Hydro, but, in event of changes ^{which} ~~will~~ result in struc-
tural or other substantial changes in the building as

described in the preliminary plans and ~~spec~~ ^{specifications}, such

changes are to be for the account of ^{Ontario} Hydro.

" Canada Square is required to engage and use the
services of the following consultants; and they are listed.

" ... Canada Square is obligated to ^{do and pay} ~~pay~~ the costs
of doing all things required for construction and com-

pletion of the building project including permits,

licences, ^{etc.} ~~and~~ ^{shall} ~~be~~ done expeditiously ^{and}
in a first class, workmanlike manner.

" Canada Square & are required to use their best

~~endeavours~~ endeavours to obtain an excavation permit as soon

as possible ^{are required to} and commence construction ~~within~~ one month of
date of issue of the excavation permit and to complete

construction 36 months ~~also~~ ^{the} from date of issue of ^{the said excavation} permit,

Subject to certain extensions ^{being} ~~to be~~ granted in the event

of delays over which Canada Square have no control.

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V.H.

(Mr. Shibley)

" Provision ^{is} made in ^{the} agreement for ^{Ontario} approvals and certain rights of inspection ^{on behalf of Ontario} ^{we} Hydro during construction, ^{period}.

" Canada Square ^{are} required to segregate from general ^{its} assets \$2 million in a separate account and use such sum together with ^{such} additional funds ^{as} ~~that~~ may be necessary to finance construction of the building until a satisfactory mortgage commitment ^{on} has been obtained. " All of the mortgage to be restricted to \$45 million Canadian or ^{its} U.S. equivalent. " This sum was agreed upon ^{and arrived at} by accepting an estimated overall cost of the building of \$34 per square foot and multiplying ^{this} ~~by~~ by the aggregate gross floor area of the building which is 1,305,822 square feet which amounts ~~to~~ ^{total} \$44,400,000.

" It is recognized that there would substantial commissions, holding fees, and legal costs ~~into~~ ^{a figure} incurred in obtaining a mortgage of this size and ~~the~~ of \$45 million was intended to include these items. There are ^{permanent} certain limitations as to how this financing can be arranged and as these are set out in the various leases, they will be dealt with at that time.

" The agreement itself also deals with ^{the} various leases set out above and ~~these~~ ^{these} will be ~~for~~ further explained ^{later} in this report.

" We feel ^{it is} important to point out at this time ^{that} ~~the~~ ^{the} obligation of the Commission to pay all taxes imposed on the land and buildings throughout the term of the ground lease. ^{we} We are informed that ^{Ontario} ~~has~~ ^{have} taken this into account and this matter was considered when the rent payable under the building lease was agreed upon.

" Ground lease. Under this document ^{Ontario} ~~Hydro~~ ^{Hydro} leases to Canada Square the site for ^{a term of} 50 years at an annual rental of \$1. ^{we} ~~you~~ realize that it was the original intention for the ground lease to be for a term of only 30 years.

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V.H.

(Mr. Shibley)

We have, however, been supplied with evidence by ^{the} solicitors for Canada Square that, in order to obtain ^{the} financing ~~to the~~ State of New York for this project, the State of New York Insurance Commission requires that where funds are being advanced on a mortgage based upon a ground lease that only two-thirds of ^{length of the} term can be taken into account ~~when~~ in determining valuation. ^{(ing the and} Accordingly, Canada Square requires a lease of approximately 50 years in order to obtain financing. ^{In order Ontario} ~~MEMORANDUM~~ to protect ^{Hydro} provisions have been inserted in the ground lease to provide for termination at the end of the term ^{was provided it} of a permanent charge ~~which~~ has been fully paid and satisfied.

" There is a ^{in the} very lengthy definition of a ground lease of the permanent charge ^{and the} restrictions on the permanent charge ^{require it} ~~are required~~ to mature on or ~~but~~ before ^{end of the term of the} the net lease, ~~to~~ be payable in monthly instalments ^{of} principal and interest not greater than ^{the} monthly instalments payable ~~under the~~ the net lease (being an amount of not more than \$2 \$5 U.S. per square foot ^{calculated on an annual basis} and be fully paid ^{and payable} ~~in full~~ of being discharged ^{or provide the} at ~~the~~ end of ~~the~~ term without any further payment. Provision is also made for a replacement charge which is covered by the same restrictions as the permanent charge.

" The ground lease also provides for the placing of an interim charge on the ground lease to finance the cost of construction. Such interim charge shall only be valued to the amount actually expended and paid in respect of the project by Canada Square, less the sum of \$6 million, so that Canada Square will always have a minimum of \$2 million invested in the project which is not secured by the project."

I might just remind the members here that there was some concern in one memorandum that should there be

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V.H.

(Mr. Shibley)

overrun on the cost of ^{building} the building, the developer should demonstrate proof of financial responsibility and in this case, Hydro actually committed them to set aside \$2 million of their own funds and so constructed the arrangement, I take it, that that \$2 million is always ^{surplus} ~~added~~ to the security of the ground lease and surplus to what might be ~~guaranteed~~.

H-189 follows

(Mr. Shibley)

H-189-1

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PLG

~~and that the building should be~~ considered in the building by Hydro.

"Provision is made in the ~~new~~ Ground Lease for Hydro to terminate the Ground Lease prior to the time that Ontario Hydro takes possession of the whole or any part of the building if Canada Square should fail to ^{begin} ~~start~~ erection of the building project in accordance with the construction agreement, and to proceed with such erection ⁱⁿ ~~by~~ proper workmanlike and expeditious manner. Notice of ^{intention} ~~intent~~ to terminate must be given to Canada Square within 90 days, or such further time as may be ^{cure} ~~reasonable~~ to ^{and} ~~their default~~ in the event that the Ground Lease is terminated, Ontario Hydro must assume all interim charges outstanding against the Ground Lease to the extent that the interim charges comply with the restrictions set out earlier in this report. Without the consent of Hydro, ~~and~~ Canada Square are restricted from assigning the Ground Lease, except for purposes of arranging interim or permanent financing, which consent shall not be unreasonably withheld. However, until the commencement of the term of the Net Lease, Hydro have the right to unreasonably withhold consent. The effect of this provision is to ensure that Canada Square stays with the project until the building is completed, and thereafter does not assign its interest in the project except with the consent of Hydro other than ^{for} ~~the~~ purposes of arranging financing."

That may also be a significant provision in light of the importance placed upon the responsibilities for maintenance and management of the building and the reputation of Canada Square as a company having excellent qualifications in that area, the assignability of

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PLG

(Mr. Shibley)

the contract and restrictions thereon would become significant.

"Canada Square are required to carry a Builder's Risk Insurance Policy and have agreed to have Hydro named as one of the insureds. However, when the matter was discussed with Mr. Lawson of your Insurance Branch, he felt that there should be a ~~x~~ waiver of subrogation in respect of contractors and sub-contractors employed by Hydro prior to final completion of the building, as Ontario Hydro may be engaging certain contractors ~~xxxx~~ to do work for them in preparation of their moving into the building. Canada Square is not prepared to have their insurers accept the risk of damage caused by negligence ~~of~~ or otherwise of Ontario Hydro's contractors or sub-contractors, and it may, therefore, be necessary for Ontario Hydro to carry insurance in respect of this matter, and ~~this~~ ^{on which} is one matter ~~we~~ ^{on which} we would appreciate ~~your~~ receiving your instructions.

"As set out earlier in this report, the Ground Lease contains an express covenant on behalf of *Ontario* Hydro to pay all real property taxes and local improvement taxes against the lands (which will include taxes on the building) at any time during the term.

Net Lease

"Under this document, Canada Square leases to Hydro the lands and completed building for a term of 30 years and such additional period of time as may be required for Canada Square to obtain the advance under its permanent financing, provided such additional time is not more than three months from the completion date. Originally, Canada Square had asked for an additional twelve months to take down their financing, but we felt that this period was

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PLG

(Mr. Shibley)

"far too long and eventually we compromised on three months as we recognize that it is ~~not~~ not always possible to have all the documentation for a mortgage of a size contemplated ~~finished~~ completed by an exact date, and it must be borne in mind that the payments under the Net Lease coincide exactly with the payments required to be made on the mortgage, so that the mortgage will be fully paid and discharged at the end of the term of the Net Lease.

"In the Net Lease, Ontario Hydro gives certain covenants in respect of insurance, liability insurance, payment of utilities, repairs, damage and destruction of buildings. All of these covenants are relieved against and assumed by Canada Square under the Lease Back. We should point out that Canada Square is required to insure the premises and there is an obligation of Canada Square to use the insurance ~~monies~~ moneys to rebuild the premises. ~~insurance~~

"Due to the nature of the transaction under which Ontario Hydro obtains full ownership of the building at the end of the Net Lease, it has been agreed that ~~the~~ the rent payable under the Net Lease would not abate in the event of partial or complete destruction of the building; otherwise the permanent Charge would not be fully paid and satisfied and Ontario Hydro could not then terminate the Ground Lease ~~and~~ ^{and} it is most important that Ontario Hydro terminate the Ground Lease at the ~~the~~ end of the Net Lease.


There are elaborate provisions in both the Net Lease and the Lease Back dealing with ~~the~~ expropriation.

Without going into these ^(pass in detail) ~~we~~ we are prepared to advise you that we feel the provisions are the usual ones and ~~that~~ that the position of ^{Ontario} Hydro is protected.

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PLGMr. Shibley

"The ~~2nd~~ ^{1a} form of Net Lease which has been agreed upon and is ~~is~~ ^{is} scheduled to the Construction Agreement does not show the rent payable. ^{And} This cannot be filled in until the actual rental payable has been determined in accordance with Section 28 of the Construction Agreement. The ~~the~~ maximum payable will be an annual rental calculated at the rate of U.S. \$3.35 per square foot on the aggregate rentable area. This sum of \$3.35 per square foot will be reduced if the amount required to fully amortize their permanent financing over its term is less than \$3.35 US and the amount payable under the lease-back is adjusted accordingly. The adjustment in these payments does not affect the rate of rental payable under the building lease unless the rate of interest at which the permanent financing is obtained is less than 8% and, in that event, there is to be a reduction in the rent payable under the building lease.

"The determination of the aggregate rentable area of the building has caused us some concern. There are, of course, several definitions available for this term and what is particularly concerning us is the recessed area on the ground floor which totals between 13,000 and 14,000 square feet. Canada Square maintain that there are certain American associations which include the recessed area as part of the aggregate rentable area and this is based on the assumption that it is as expensive to build the recessed area as it would be to include it in the building. This overlooks the fact that the tenant renting the space behind the recessed area



H-190-1 follows

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M.T.

H-190-1

(Mr. Shibley)

"...the space behind the recessed area usually pays slightly higher rent in view of recessed area. Any definition which we have been able to find makes no provision for including the recessed areas as part of the aggregate rentable area. As a compromise, Canada Square have proposed that the recessed area immediately in front of the lobby be included in the aggregate rentable area and that 50 per cent of all of the other recessed areas be included in the aggregate rentable area. This is an item which we have not been able to resolve and would appreciate receiving your instructions in respect of it.

"We have not referred to all of the Net Lease. However, we are of the opinion that the matters to which we have not referred in this report are those items usually found in such a document and Ontario Hydro's rights are satisfactorily protected.

Lease Back

"This document transfers back to Canada Square the lands and completed building project and is in effect a reversal of the Net Lease. It is, however, for one day less than the Net Lease so that it does not represent an absolute assignment of the Net Lease. The Lease Back will be registered on title after the permanent Charge is registered.

"Under the Lease Back, Canada Square assume all of the covenants given by Ontario Hydro in the Net Lease other than those covenants such as the covenant to pay taxes, etc., for which it is intended that Ontario Hydro remain liable.

"The rent payable under the Lease Back will be the same dollar amount as payable under the Net Lease save and except that under the Lease Back the amount is payable in Canadian funds. It is the difference between the payment by Ontario Hydro of US money under the Net Lease and the payment by Canada Square in Canadian funds under the Lease Back which, in the event of a change in the exchange rate between the

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M.T.

H-190-2

Mr. Shibley

Canadian and US dollar subsequent to the date when the funds are drawn down on the permanent financing, ensures that the risk of the exchange fluctuation remains with ~~Canada~~ Ontario Hydro. This is a risk which Ontario Hydro has always agreed to accept and is dealt with later in this report.

"In addition to the basic rent referred to in the preceding paragraph, Canada Square has agreed to pay to Ontario Hydro 50 per cent of all rents received by it for commercial areas on the upper concourse in excess of \$6.00 per square foot per year. This concession was obtained due to the fact that Ontario Hydro are paying the taxes on the entire building and, while Ontario Hydro are being given an amount of \$1.08 per square foot on all the commercial area, it was felt that this might not, over a period of time, compensate for all the taxes payable in respect of the commercial area and that it was essential to obtain some additional income ~~from~~ from the commercial area if possible. The above solution represents a compromise between obtaining additional rent on all of the commercial area and receiving no additional rent. Your instructions that this compromise is satisfactory would be appreciated.

"The balance of the clauses in the Net Lease are those usually found in a document of this nature and don't need to be referred to in this letter.

Building Lease

"This is the document under which Ontario Hydro will occupy the building for a period of 30 years and which establishes the contractual rights between Canada Square and Ontario Hydro for the operation of the building during the term of the Lease.

As provided in the Construction Agreement, the term of the Lease is for 30 years and for such additional time as may be required to draw down the permanent financing, but not in

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M.T.

H-190-3

(Mr. Shibley)

excess of an additional three months .

"The rent payable under this Lease is not filled in in the Schedule attached to the Construction Agreement and is governed by Section 32 of the Construction Agreement and is to be calculated at the rate of \$4.84 per square foot subject to escalation for increases in maintenance costs, and also for a reduction in the \$4.84 in the event that Canada Square are able to arrange their financing at less than 8 per cent per annum.

The rental rate of the Building Lease was originally agreed upon at \$4.92 per square foot per annum. This was to include all of the commercial area which was to be rented back by Canada Square at an annual rental of \$6.00 per square foot, leaving a margin of \$1.08 per square foot for Ontario Hydro in respect of the commercial area. In order to simplify matters, the commercial area was deleted from the Building Lease, and, when the calculations were made, this resulted in an effective rental rate of \$4.84 per square foot per annum in respect of the space being rented to Ontario Hydro."

That~~s~~, I think, ^{is} a significant, or important, explanation there of how the effective rental rate of \$4.84 was determined. Built into it is this other factor:

"Canada Square assumes the obligation to maintain and repair the building throughout the lifetime of the Lease, subject to two exceptions, both of which are of considerable importance:

- a) If the demised premises or any parts thereof get out of repair or become damaged as a result of carelessness, negligence, etc., of the Tenant (Ontario Hydro), its servants, agents or employees or anyone permitted by it to be on the premises, the expense of all necessary repairs shall be borne.

Tape H-191 follows

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DT

(Mr. Shibley)

escalation in the maintenance costs (as defined in the building lease) over the base year which is defined to mean the 12 consecutive months commencing six months after the date of the commencement of the term.

"In an effort to control the moneys which might be expended for maintenance by Canada Square, a provision has been inserted whereby there must be deducted from the maintenance costs the following:

- (a) any costs considered unreasonable, unnecessary or frivolous;
- (b) costs incurred in excess of the costs which would have been incurred had Canada Square maintained the building to such lower standards of maintenance as would have been reasonably specified by Hydro; and
- (c) ~~any costs~~, any part of the costs, in excess of the costs which would have been incurred had the services been performed or furnished at rates competitive with those in effect at the time in the city of Toronto.

"In addition to the above safeguards, Hydro are entitled to have their auditor examine the books to verify the amount of the calculation.

"In the event of damage or destruction of the building, it is to be rebuilt by Canada Square and, during the course of repairing or rebuilding, there is to be an abatement of rent equal to \$1.49 per square foot on the rentable area not capable of being used by Hydro.

"There is nothing said in the building lease as to what happens in the event of expropriation. We believe that insofar as the building lease was concerned, the decision of the Land Compensation Board would have to be accepted. If here ^{was} an expropriation, there would be a provision for an abatement of rent.

The balance of the provisions in the building lease are those normally found.

There are certain matters that we would like to comment ~~specifically~~ upon:

4-2281-5

May 30, 1973
4.55-5.00 p.m.
M.F.

H - 192 - 1

Chairman: Mr. MacBeth

(Mr. Shibley)

~~In addition to the specific requests for~~
~~instructions with respect to these documents, we assume~~
~~that you will inform us of any other necessary changes.~~
" In addition to the specific requests for instructions with respect to these documents, we assume that you will inform us of any other necessary changes.

"Canada Square is pressing hard to obtain execution of the building agreement," and so on."

Mr. Chairman, it is now five ^{minutes} ~~minutes~~ to five. I suggest it would be a convenient time to recess.

By the way, I did tell members of the committee that I would alert them to the sequence of witnesses to come, ~~following completion of~~ following completion of Mr. Gathercole's evidence, and you will have noted I have used Mr. Gathercole as a vehicle, I say that with respect, to introduce a lot of documentation. I will at that juncture have, so to speak, completed in chronological sequence, substantially the whole of the series of events that I want to cover with this witness, and then my intention is to go back and start with Mr. Barry Brooks, ^{who} sort of introduced Mr. Moog and Canada Square to the Hydro people. I will be calling him as the next witness and thereafter I will call Mr. Sissons, of Ontario Hydro.

Mr. Chairman: Any questions of Mr. Shibley? Mr. Gathercole, do you feel a little bit used this afternoon?

Mr. Gathercole: It has been a very exciting procedure for me anyway but perhaps not for anyone else.

Mr. Chairman: In any event we would like you back at three o'clock tomorrow, until which time the committee stands adjourned.

Mr. Gathercole: Thank you very much.

The committee adjourned at 5:00 o'clock, p.m.

LIST OF EXHIBITS

- Exhibit 76. Memo for file - June 29, 1972
re New Head Office Building
77. "Advice of Commission Decision" - June 29, 1972
re Negotiation of Agreement with Canada Square
78. Memo - June 29, 1972
From M. Nastich to J.O. Dean
re Commission Discussion of New Head Office Building
79. Memo - July 6, 1972
From J.O. Dean to M. Nastich
re New Head Office Building
80. Memo for file - Commission Meeting of July 12, 1972
re New Head Office Building
81. Memo - July 13, 1972 - K.H. Candy to file
re List of Comparable Buildings
82. Letter - July 17, 1972
Bank of Montreal to K.H. Candy re Canada Square group
83. Memo - July 19, 1972
From K.H. Candy re New Head Office Building
84. "Advice of Commission Decision" - July 19, 1972
re Negotiation of Contract with Canada Square
85. Memo to file - July 19, 1972
From K.H. Candy re New Head Office Building
86. Memo - July 31, 1972 - From H.J. Sissons to K.H. Candy
re Negotiation of Contract with Canada Square
87. Letter - August 8, 1972 - From K.H. Candy to J. Moog
re Reasoning of Site of New Head Office Building
88. Copy of News Release - August 25, 1973
"New Head Office Planned for Hydro"
89. Letter - September 21, 1972 - From K.H. Candy to J. McCallum
re Agreement with Developer
90. Memo - September 27, 1972 - From H.J. Sissons
to John Ross, Crown Trust Co.

LIST OF EXHIBITS (continued)

- Exhibit 91. Memo - October 2, 1972 - From D.J. Gordon
to G.E. Gathercole re Rationale of Decision
re New Head Office Building
92. Statement - May 24, 1973 - By Lt. Col. A.A. Kennedy
re Friendship of Premier and Mr. Moog
93. Draft Memo - October 2, 1972
"Rationale for Course Followed in Selection
of Developer"
94. Note - October 11, 1972 - re progress of negotiations
with developer of new Head Office Building
95. Letter - October 16, 1972 -
From Harries, Houser, Brown and McCallum to M. Nastich
re Exchange Rate Fluctuations
96. Letter - October 25, 1972 -
From Harries, Houser, Brown and McCallum to
Chairman and Members of Hydro-Electric Power
Commission
re New Head Office Building

BINDING SECT. OCT 24 1974

